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No. 94-7427

In The

Supreme Court of the United States

October Term, 1994

JOSEPH V. LIBRETTI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

JOINT APPENDIX

SARA SUN BEALE
(Appointed by this Court)
Duke University School
of Law
P.O. Box 90360
Corner of Science Drive
& Towerview
Durham, N.C. 27708-0360
Telephone: 919-613-7091
Counsel for Petitioner

DREW S. DAYS
Solicitor General
U.S. Department of Justice
Washington, D.C. 20530
Telephone: 202-514-2201
Counsel for Respondent

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

United States District Court for the District of Wyoming

No. 92CR0006B

1/31/92	1)	Indictment
	13)	Libretti – Courtroom Minute Sheet – ARR; plea of not guilty to Cts 1-12, Deft has 10 days for motions, JT 3/16/92 at 9:30 a.m.
4/2/92	99)	Ex Parte Motion for entry of protective order
	100)	Ex Parte Memorandum of points & authorities in support of motion for entry of a protective order
	101)	Restraining Order cc mld 4/2/92
4/9/92	104)	Motion to amend attachment A to the restraining Order issued by the Court on 4/2/92
	105)	Order granting US motion to amend restraining order attachment A
5/22/92	122)	SUPERCEDING INDICTMENT
5/27/92	125)	COURTROOM MINUTES SHEET of rearraignment on superseding indictment. Pleas of NG entered to all counts. Rptr Cole.
9/15/92	174)	Bill of Particulars & second motion to amend attachment A to the restraining order issued by the Court on April 2, 1992

	175)	Order granting US second motion to amend restraining Order attachment A cc mld 9/15/92
9/30/92	188)	Motion to Compel Testimony – T.R. Libretti
	189)	Motion to compel testimony – J.V. Libretti SR
	190)	Motion to compel testimony – W. Libretti
	191)	Motion to compel testimony – T. Standley
	192)	Motion to compel testimony – S. Raymond
	193)	Order – cc hand delivered 9/30/92
	194)	Order compelling testimony – J. V. Libretti Sr.
	195)	Order compelling testimony – S. Raymond
	196)	Order compelling testimony – T. Standley
	197)	Order compelling testimony – W. Libretti
	198)	Order compelling testimony – T.R. Libretti
10/5/92	202)	Courtroom Minute Sheets – Jury Trial Day 1 through Day 5; (9/28-10/2/92)

	203)	Courtroom minute sheet – COP; plea of guilty to CL 6, Deft Libretti referred to probation for presentence report *ALL EXHIBITS RETURNED TO US ATTY*
10/5/92	210)	Libretti – Plea Agreement
	252)	Libretti – Prosecutor's Statement
12/16/92	256)	Notice setting sentencing for deft Libretti for 12/23/92 at 11:15 a.m. before Judge Brimmer cc mld 12/16/92
12/23/92	257)	Motion for entry of Forfeiture order
12/23/92	258)	Libretti – Courtroom Minute Sheet – Sentencing 240 mos impris; 5/ yrs supr rel w/ spec cond, $5,000.00 fine; $50.00 SA
	259)	Order of Forfeiture (10 Cert cys to USA)
	260)	Memorandum of sentencing hearing & report of statement of reasons
12/23/92	261)	Order cc mld 12/24/92
	262)	Libretti – Judgment including sentence under the sentencing reform EOD & mlf 12/24/92
12/28/92	263)	Second Motion (sealed)
	264)	Order (Sealed)
12/29/92	265)	Libretti – Notice of Appeal (forfeiture)

12/30/92	266)	Libretti – Notice of Appeal (fine)
1/4/93	267)	Motion for payment of third party claim under 21:853(n)(6)(B) & Affidavit in support
1/15/93	268)	Libretti – Letter of USCA – assigning case #93-8001 (fine)
	269)	Process receipt & return (2)
1/19/93	270)	Libretti – Motion for leave to Proceed IFP on Appeal
	271)	Libretti – Affidavit in support of Motion to proceed on appeal IFP
	272)	Libretti – Certificate of Service
	273)	Libretti – Letter of USCA assigning case # 93-8000 (forfeiture)
	274)	Affidate in support of third party claimants motion & petition to amend the order of criminal forfeiture/ Motion & petition to amend the order of criminal forfeiture under authority of 21:853(n)(6)(A)
	275)	Libretti – Affidavit in support of defts motion for satisfaction of third party interests in defts property under authority of 21:853(n)(6)(A) & (B) & Defts Motion for satisfaction of third party interest in defts property under authority of 21:853(n)(6)(A) & (B)
1/20/93	276)	Libretti – USA's opposition to deft motion for stay

1/6/93	278)	Libertti [sic] – Motion for stay of execution of order of criminal forfeiture under Rule 38 FRCrP, Rule 8 FRAP & Rules 62, 65 FRCvP
1/22/93	280)	Libretti – Motion for return of property pursuant to 21:853(n)(6)(A)
	281)	Libretti – Affidavit in support of third party claimant's motion for return of property
	282)	Libretti – Deft Affidavit in support of third party claimant Claudia Porter's motion for return of property pursuant to 21:853(n)(6)(A)
	283)	Libretti – Defts Affidavit in support of third party claimant Claudia Porter's motion to amend the order of criminal forfeiture for third party interest under 21:853(n)(6)(A) & (B)
	284)	Libretti – Affidavit in support of third party claimant's motion to amend the order of criminal forfeiture under 21:853(n)(6)(A) & (B)
1/25/93	285)	Porter – Motion to amend the order of criminal forfeiture for third-party interests under 21USC [sic] 853(n)(6)(A) & (B).
1/26/93	286)	Svs by USM upon Claudia Porter
	287)	Svs by USM upon Seattle Mortgage
1/28/93	289)	USM's RETURN OF SERVICE of order of forfeiture upon Lincoln County Clerk on 1/7/93
1/29/93	290)	Precess [sic] receipt & return

2/2/93	294)	Motion to compel deft to turn over certificates for GNMA Customer pool accoutn [sic] numbers
	296)	Process receipt & return
2/9/93	297)	Order compelling Joseph V. Libretti Jr to turn over GNMA Certificates cc hand delivered 2/9/93
	298)	Courtroom Minute Sheet – Libretti motions heard – Ancillary Hearing set 3/26/93 at 9:00 a.m. before Judge Brimmer
	299)	Order – RE; Libretti Motions
2/12/93	300)	Libretti – Order on hrng of 2/9/93
2/16/93	301)	libretti [sic] – Motion for extension of time to file Notice of Appeal
	302)	Libretti – Notice of Appeal (Special Assessment)
2/17/93	306)	Libretti – 3rd party claimant's motion & petition for third party interests in cashiers checks & GNMA & FNMA securities under 21:853(n)(6)(A) w/ affidavit in support
2/19/93	307)	Libretti – SUBMISSION of Affidavit of Publication
2/22/93	308)	Libretti – defts MOTION for APPOINTMENT of Counsel and REQUEST for Court ordered funds to allow deft to comply with order compelling deft to turn over GNMA certificates

	309)	Libretti – THIRD PARTY CLAIMANTS MOTION & PETITION asserting third party property interests in bank svgs acct under title 21 USC (Dr. & Mrs. Liberetti [sic])
	310)	Libretti – Deft DESIGNATION OF RECORD on Appeal 93-8001
	311)	Libretti – Deft Transcript order form due 3/25/93 93-8001
2/23/93	312)	Libretti – PROCESS RECEIPT & return – First Federal Bank for Savings, Des Plaines, IL served 2/11/93 (forfeiture)
	313)	Libretti – PROCESS RECEIPT & return – Cole Taylor Bank Weeling [sic], IL served 2/11/93 (forfeiture)
	314)	Libretti – PROCESS RECEIPT & return – LaSalle Talman Bank, Chicago, IL served 2/12/93 (forfeiture)
	315)	Libretti – Pltf DESIGNATION of Record on Appeal
	316)	Libretti – PROCESS RECEIPT & return – Barclay's American Mortgage Corp, Charlotte, NC served 2/17/93 (forfeiture)
3/9/93	319)	Libretti – BRIEF in support of deft, Porter's and other thrid [sic] party's motions for amendment of order of forfeiture
	320)	Libretti – AFFIDVAIT [sic] in support of brief

3/18/93	324)	Ex Parte Motion for issuance of subpoena in forma pauperis
	325)	Ex Parte motion for issuance of subpoenas duces tecum in. forma pauperis
3/22/93	326)	Ex Parte Order for issuance of subpoenas in forma pauperis
	327)	Ex Parte Order denying motion for issuance of subpoenas duces tecum in forma pauperis
3/23/93	328)	Libretti – Motion for return of property under Rule 41(e)FRCrP 21:853 & 18:924(d)(1)
3/24/93	329)	Libretti – MOtion [sic] for return of property under Rule 41(e) FRCrP
3/25/93	330)	Motion for return of property under Rule 41(e) FRCrP
	331)	Defts Brief in support of oral argument for the March 26, 1993 Hearing
3/26/93	332)	Libretti – Courtroom mInute [sic] Sheet – forfeiture hearing, matter referred to U.S. Magistrate
3/30/93	335)	Motion to allow sale of firearms
		TRANSCRIPT OF CHANGE OF PLEA held 10/5/92 Certified Copy & Copy filed
3/31/93	336)	Order Allowing sale of firearms cc mld 3/31/93
3/29/93	337)	Notice of US Atty to 3rd parties w/ returns

3/30/93		Liberetti [sic] – Transcript of COP 10/5/92
4/2/93	338)	Libretti – Order amending 12/23/92 Forfeiture Order ccmld 4/5/93
4/5/93	339)	Libretti – Motion for discovery & transcripts
4/1/93	340)	Liberetti [sic] – Pltf Designation of Record #93-8000
4/7/93	343)	Libretti – Designation of record by USA [sic] in 93-8001
		Record sent to USCA 93-8000 (3 vols) forfeiture
4/8/93		Libretti – Letter to USCA trans ordered and due by 5/8/93 (USA)
4/9/93		TRANSCRIPT – 9/30/92 TRIAL PROCEEDINGS vol III of V
		TRANSCRIPT – 9/30/92 TRIAL PROCEEDINGS VOL II of V
4/5/93	346)	SUBPOENA to Beverly Libretti served 3/23/93
4/9/93	347)	Libretti – Motion for written findings of facts and conclusions of law related to 4/2/93 denial of motions for return of property
4/12/93	348)	Libretti – NOTICE of Appeal 4/2/93 order
4/15/93	349)	MOTION to amend the 12/23/92 order of cr forfeiture
4/14/93		TRANSCRIPT OF Hearing held 3/26/93 (cert. cy & cy)

		TRANSCRIPT of trial proceedings vol IV of V 10/1/92 cert cy & cy
4/19/93		Letter to USCA re: appeal filed 4/12/93 (forfeiture)
4/28/93		TRANSCRIPT of TRIAL PROCEEDINGS held 10/2/92 vol V of V cert. copy & copy filed
4/30/93	352)	Libretti - MOTION TO PROHIBIT sale of firearms
5/4/93		TRANSCRIPTS of MOTIONS PROCEEDINGS held 2/9/93 cert copy & copy filed
5/4/93	353)	Libretti – USA MOTION to reconsider and vacate courts order amending 12/23/92 forfeiture order
5/5/93		Libretti – Letter from USCA re: possible jurisdictional defect; record needs to be sent 93-8029
5/6/93	354)	Libretti – NOTICE setting 2nd prehearing conf. on 6/9/93 @ 2:00 pm in CHY before Mag. Beaman cc md 5/7/93
5/10/93	355)	Libretti designation of record on appeal by USA on 93-8000
5/11/93	356)	Libretti – CERTIFICATE OF SERVICE from USA re: Designation of Record
5/7/93	357)	Libretti – ORDER on Prehearing Converence [sic] held 5/6/93 before Mag. Judge Beaman. Next hearing set for 6/9/93 @ 2: pm in CHY (deft to appear by telephone) (wcb 5/7/93) cc md 5/13/93

5/27/93	369)	Libretti – ENTRY of Appearance – Pro SE
	370)	Libretti – DESIGNATION or record on appeal by deft 93-8001
5/28/93	371)	Libretti – ORDER Postponing Sale of Firearms (5/28/93 cab) eod 6/7/93 cc md 6/7/93
6/4/93	374)	Libretti – MOTION to stay Proceedings in Mag. Court
6/7/93	375)	Libretti – ORDER staying Proceedings in Mag. Court (cab 6/7/93) eod 6/7/93 cc md 6/7/93
6/9/93		Record sent to USCA (15 volumes) also transcript letter sent cc counsel 6/9/93
6/7/93	376)	Libretti – MOTION for release of property under rule 41(e)
7/14/93	380)	Libretti – MOTION to Compel USA to pay property taxes re: Lot 39 Star Valley Ranch
8/3/93	381)	LIBRETTI – PROCESS Receipt and Return to RAF Financial Corp. (re: order of forfeiture)
	382)	Libretti – PROCESS receipt and Return to Vectra BAnk [sic] of Lakewood (re Order of forfeiture
8/5/93		Copies of transcripts vols. 6-14 mailed to Libretti
10/4/93	385)	ORDER from USCA denying remand for limited appeal. Fed Pub Def in CO appointed counsel for appeals.

1/18/94	389)	Libretti – MOTION for return of business records
	390)	Libretti – MOTION for return of $33,160
	391)	Libretti – BRIEF in support of motion to return $33,160 by deft
3/7/94	394)	Libretti – re: appeal 93-8029 – lack of jurisdiction appeal is dismissed (does not affect appeals 93-8000 or 93-8001
3/14/94	396)	Libretti – Third Party motion for finding of due process violation and order invalidating forfeiture of real property on constitutional grounds (cy sent to USCA)
3/22/94	398)	Libretti – US RESPONSE to 3rd party claimant Dr. Joseph Libretti, Sr.'s motion to invalidate forfeiture (cys to USCA)
4/18/94	397)	THIRD PARTY CLAIMANT'S REPLY to motion to invalidate forfeiture of real property
5/2/94	399)	MOTION to dissolve restraining order by deft
5/23/94	400)	NOTICE of motion for dissolution of restraining order
8/22/94	401)	Libretti – ORDER from USCA requesting 7/22/92 motion transcript (Orig trans was sent with Sabell appeal and destroyed, cy ordered from WY Rptrs)

8/24/94		Above missing transcript re-transcribed by WY RPTRS and file stamped with original date of 7/22/92 – copy faxed to USCA
10/11/94	402)	Libretti – ORDER AND JUDGMENT re: 93-8001 appeal USCA affirmed USDC decision
12/5/94	405)	Libretti – MANDATE from USCA re: 93-8000 appeal forfeiture is affirmed, govt motion to dismiss is denied and defts motion for limited remand is denied as moot.
12/20/94	406)	Libretti – MOTION by Pltf for order permitting sale of firearms
12/21/94	407)	Libretti – Motion by USA to amend certificate number
12/28/94	410)	Libretti – Order allowing sale of firearms
12/30/94	412)	Libretti – Notice of Motion and Motion for dissolution of restraining order
1/3/95	413)	Libretti – Defts Motion in opposition to Pltf Motion for order permitting sale of firearms, defts Motion for amendment of order of forfeiture & motion for return of property or in the alternative, defts motion for withdrawal of guilty plea pursuant to Rule 30(d) FRCrP

	414)	Dept Motion in opposition to pltf motion to amend certificate number, defts motion for dissolution of restraining order or in the alternative, defts motion for withdrawal of guilty plea pursuant to Rule 32(d) FRCrP
1/9/95	415)	LETTER from USCA that A Writ of Certiorari was filed on 12/27/94 and assigned Supreme Court # 94-7427
1/12/95	416)	Libretti - Motion for order regarding machine gun retained by the US Marshals service and the BATF
1/13/95	417)	Libretti - Order cc mld 1/13/95
1/20/95	418)	Libretti - Third party claimants motion for amendment of order of forfeiture & return of property & 3rd party claimants motion for amendment of order amending 12/23/92 order of forfeiture
1/23/95	419)	Libretti -- Defts additional motion in opposition to Pltf motion to amend certificate number, defts mtn for dissolution of restraining order or in the alternative defts mtn to withdraw plea of guilty pursuant to Rule 32(d) FRCrP
	420)	Libretti - Motion for reconsideration of Court's 1/13/95 Order granting pltf motion for order regarding machine guns retained by the US Marshals service & the BATF
	421)	Libretti - Order amending certificate number cc mld 1/27/95

2/14/95	422)	Libretti - Order denying reconsideration cc mld 2/14/95
2/15/95	423)	Librettis [sic] - Motion for appointment of counsel for perparation [sic] of a motion pursuant to 28:2255 or in the alternative, motion for dissolution of restraining order on GNMA Bonds
2/24/95	424)	Govt - Motion to make Rule 6(e) of the FRCRP disclosure of grand jury testimony
2/24/95	425)	Order permitting disclosure of grand jury testimony cc mld 2/24/95
3/13/95	426)	MOTION by Libretti for judgment on the pleadings pursuant to Rule 12(c) Fed.R.Civ.P.
4/3/95	427)	Libretti - Motion challenging the factual basis for the forfeiture of real & person property, motion to set aside the forfeiture of real & personal property, and motion objecting to the use of transcripts pursuant to RUle [sic] 6(e) FRCrP
5/12/95	428)	Govt MOtion [sic] for stay

United States Court of Appeals for the Tenth Circuit

No. 93-8000

1/13/93	1	[646727] Criminal case docketed. Preliminary record filed. Fee due 1/25/93 for Joseph V. Libretti (kc) [93-8000]
1/14/93	4	[647070] Jurisdictional review complete. Fee or IFP forms due 2/23/93 IN DISTRICT COURT for Joseph V. Libretti; Record on appeal due 1/25/93 from dist. court; Notice of appearance due 1/25/93 for Gay Woodhouse; Notice of appearance due 2/23/93 for Joseph V. Libretti; and Appellant's brief on the merits due 2/23/93 for V. Libretti. (sks) [93-8000]
1/22/93	8	[648782] Notice of appearance filed by Gay Woodhouse in 93-8000 as attorney for USA in 93-8000. CERT. OF INTERESTED PARTIES (y/n): n (kc) [93-8000]
2/2/93	9	[651495] Appellant's addendum to motion filed by Appellant Joseph V. Libretti in 93-8000 to appoint attorney. Original and 0 copies c/s: y (lwb) [93-8000]
2/12/93	14	[654508] District court order granting leave to proceed in forma pauperis filed. ROA due 2/26/93 for Clarence A. Brimmer (lwb) [93-8000]

2/16/93	16	[654546] Order filed by Judge(s) McKay denying Appellant/Petitioner motion to appoint attorney [651495-1] Parties served by mail. (lwb) [93-8000]
2/18/93	19	[655321] Appellee's motion to dismiss case [93-8000] filed by USA in 93-8000. Original and 3 copies. c/s: y (kc) [93-8000]
2/18/93	21	[655532] Appellant's motion for stay of forfeiture proceedings submitted to panel. (lwb) [93-8000]
2/22/93	22	[656166] Order filed by RLH – appellant's response to appellee's motion to dismiss due 3/4/93 for Joseph V. Libretti. Parties served by mail. (kc) [93-8000]
2/25/93	24	[657080] Order filed by Judge(s) McKay, Anderson denying Appellant/Petitioner motion for stay of district court's forfeiture order. [648192-1] Parties served by mail. (lwb) [93-8000]
3/8/93	26	[659908] Appellant's response filed by Joseph V. Libretti in 93-8000 to Appellees motion to dismiss case Original and 2 copies. c/s: y (kc) [93-8000]

3/15/93	28	[661574] Appellant's motion for reconsideration for stay of execution of order of forfeiture; request for evidentiary hearing, filed by Appellant Joseph V. Libretti in 93-8000, Appellant Joseph V. Libretti in [93-8000, 93-8001]. Original and 0 copies c/s: y (kc) [93-8000 93-8001]
3/31/93	31	[665448] Appellant's motion for reconsideration submitted to panel. (jtp) [93-8000]
4/5/93	32	[666522] Order filed by Judge(s) McKay, Anderson denying Appellant/Petitioner motion for reconsideration [661574-1] Parties served by mail. (lwb) [93-8000]
4/16/93	35	[669866] Order filed by RLH - "Both parties shall forthwith advise this court if there is any reason not to brief and decide appellant's direct criminal appeal even if the court should remand the appeal of the forfeiture proceedings." Response due 5/3/93 for USA, Joseph V. Libretti in 93-8000, 93-8001. Parties served by mail. (kc) [93-8000 93-8001]
4/21/93	36	[671002] Appellant's response to the court's order of 4/16/93 filed by Joseph V. Libretti in 93-8000, 93-8001. Original and 3 copies. c/s: y (kc) [93-8000 93-8001]

5/4/93	37	[675787] Appellee's response to order dated April 16, 1993, and defendant's motion for limited remand filed by USA in 93-8000, 93-8001. Original and 3 copies. c/s: y. (kc) [93-8000 93-8001]
5/6/93	38	[675531] Appellant's motion to remand, appellee's response and appellant's response in 93-8000, 93-8001, submitted to panel. (kc) [93-8000 93-8001]
9/1/93	45	Order filed RLH - Appellee's motion to dismiss REFERRED TO PANEL ON THE MERITS. (ktc) Parties served by mail. (ss) [93-8000]
9/14/93	53	[710484] Appellant's PRO SE brief filed by Joseph V. Libretti in 93-8000. Original and 3 copies. c/s: y. Served on 9/11/93 Oral argument? pro se. (lwb) [93-8000]
9/15/93	49	[707051] Appellant's motion for general relief (to refile) submitted to panel. (ktc) (ss) [93-8000]
9/29/93	51	[710399] Order filed by Judge(s) Seymour, Kelly appointing Michael Katz, Federal Public Defender to represent appellant. Parties notified by mail. [93-8000, 93-8001, 93-8029], - supplemental brief due 10/29/93 for USA in 93-8000 Parties served by mail. Appellee's brief due 30 days from service of sup. br. in 93-8000 and 93-8001. (lwb) [93-8000 93-8001 93-8029]

10/6/93	54	[712470] Appellee's motion to allow sale of forfeited property [93-8000] filed by USA in 93-8000 and submitted to panel. (kc) [93-8000]
10/8/93	55	[713229] Appellant's response to government's motion to allow sale of forfeited property filed by Joseph V. Libretti in 93-8000 and submitted to panel. Original and 3 copies. c/s: y (kc) [93-8000]
10/20/93	56	[715588] Order filed by Judge(s) Seymour, Kelly granting Appellee/ Respondent motion to allow sale of forfeited property, so long as the proceeds are held in escrow pending appeal. [712470-1] Parties served by mail. (lwb)
10/22/93	58	[716142] Appellant's response to government's motion to allow sale of forfeited property filed by Joseph V. Libretti in 93-8000. Original and 3 copies. c/s: y (kc) [93-8000]
10/29/93	59	[718496] Appellant's motion filed by Appellant Joseph Libretti in 93-8000 to reconsider the order allowing sale of property, and request for findings of fact and conclusions of law [93-8000]. Original and 3 copies c/s: y (kc) [93-8000]
11/18/93	62	[722162] Order filed by Judge(s) Seymour, Kelly denying Appellant's motion for reconsideration of the court's order of 10/20/93. [718496-1] Parties served by mail. (lwb) [93-8000]

12/10/93	67	[727744] Appellant's supplemental opening brief filed by Joseph V. Libretti in 93-8000. Original and 7 copies. c/s: y. (kc) [93-8000]
1/18/94	72	[736602] Appellant's motion for findings of fact and conclusions of law regarding this court's decision granting appellee's motion to sell forfeited property [93-8000] filed by Joseph V. Libretti in 93-8000 and submitted to panel. (kc) [93-8000]
2/4/94	73	[739798] Order filed by Judge Kelly denying Appellant's motion for findings of fact, etc. [736602-1] Parties served by mail. (kc) [93-8000]
2/14/94	77	[747570] Appellee's brief filed by USA in 93-8000, 93-8001, 93-8029. Original and 7 copies. c/s: y. served on 2/11/94. Oral Argument? n. Appendix filed Original and 1 appendix copy. (kc) [93-8000 93-8001 93-8029]
3/4/94	76	[747466] Appellant's pro se reply brief filed by Joseph v. Libretti in 93-8000. Original and 3 copies. c/s: y (kc) [93-8000]
3/17/94	79	[750837] copy of "Third Party Motion for Finding of Due Process Violation and Order Invalidating Forfeiture of Real Property on Constitutional Grounds" filed in district court, filed by Appellant Joseph V. Libretti in 93-8000. Original and 0 copies. c/s: n. (kc) [93-8000]

3/17/94	80	[751203] Appellee's motion to file a supplemental response brief [93-8000, 93-8001] filed by USA in 93-8000, 93-8001. Original and 3 copies. c/s: y (kc) [93-8000 93-8001]
3/22/94	81	[751594] Order filed by RLH granting Appellee's motion to file a supplemental brief [751203-1] in 93-8000. Parties served by mail. (kc) [93-8000 93-8001]
5/26/94	85	[769052] Supplemental record filed: 1 Volume – Sup. Vol. I (Pleadings). Copy filed in Volume: y. (kc) [93-8000]
6/8/94	86	[771770] Case submitted to panel on the briefs pursuant to Rule 34. (sls) [93-8000]
6/8/94	87	[772109] Appellant's motion for limited remand for the purpose of granting the district court . . . filed by Appellant Joseph V. Libretti in 93-8000 to remand case [93-8000]. Original and 3 copies c/s: y (kc) [93-8000]
10/19/94	89	[802793] Terminated on the Merits after Submission Without Oral Hearing; Affirmed; Written, Signed, Published. Logan, authoring judge; Barrett; Russell. [93-8000] (jtp) [93-8000]
11/7/94	91	[809251] Petition for rehearing in banc [93-8000] filed by Joseph V. Libretti in 93-8000. Original and 14 copies. c/s: y (jtp) [93-8000]

11/9/94	92	[809259] Document [809251-1] Petition for rehearing in banc filed by Appellant Joseph V. Libretti Jr. submitted to panel. (jtp) [93-8000]
11/23/94	93	[811805] Order filed by Judges Logan, Barrett, Russell denying Petition for rehearing in banc [809251-1] (kc) [93-8000]
12/1/94	94	[813875] Mandate issued. Mandate receipt due 1/3/95 (jtp) [93-8000]
12/9/94	95	[816054] Mandate receipt filed. (kc) [93-8000]
1/4/95	96	[822368] Petition for writ of certiorari filed on 12/27/94 by Appellant Joseph V. Libretti in 93-8000. Supreme Court Number 94-7427. (mt) [93-8000]
3/1/95	97	[836717] Case file closed. 2/28/97 (das) [93-8000]
3/28/95	98	[843933] Appellant's motion filed by Appellant Joseph V. Libretti in 93-8000 [93-8000] to borrow the record on appeal for 10 days for purposes of preparing brief on crt. 5 volumes of pleadings, 9 volumes of transcripts, PSR and 2 volumes of sup. roa. Original and 3 copies c/s: y (lwb) [93-8000]
3/29/95	99	[843939] Order filed by Judge(s) Brorby, Kelly granting Appellant/ Petitioner motion to borrow court's record for purposes of cert. [843933-1] Parties served by mail. (lwb) [93-8000]

3/31/95	101	[844810] Supreme Court order dated 3/27/95 granting motion for leave to proceed in forma pauperis and granting the petition for writ of certiorari filed. (mt) [93-8000]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 92CR0006B
v.	)	
JOSEPH V. LIBRETTI JR.,	)	
Defendant.	)	

RESTRAINING ORDER

(Filed Apr. 2, 1992)

THIS MATTER having come before the Court upon the Motion of the United States of America for the entry of a protective order pursuant to 21 U.S.C. §§ 846, 848, 853, and 18 U.S.C. § 982(a)(1), and it appearing to the satisfaction of this Court:

1. That on January 31, 192 [sic], a federal grand jury of this District has returned an Indictment charging the above-named Defendant with violations, *inter alia*, of 18 U.S.C. §§ 1956, AND 21 U.S.C. § 846, 848 and alleging that the property named in this Order would, in the event of conviction, be subject to forfeiture pursuant to 21 U.S.C. § 848 (a) and 853 and 18 U.S.C. § 982(a)(1);

2. That the United States has moved *ex parte*, for a Protective Order pursuant to 21 U.S.C. §§ 848 (a) and 853, and 18 U.S.C. § 982(b)(1), to preserve the status quo and prevent the above-named Defendant from alienating, encumbering, or wasting said forfeitable property; and

3. That reasonable cause has been shown for the entry of a protective order to preserve the property named in this Order, based upon the Indictment and the Supporting Motion and Memorandum submitted by the United States.

4. It is, therefore, the ORDER of this Court that this Protective Order issue and that as to all of the property described in Attachment A hereto, incorporated herein by this reference:

The Defendant, JOSEPH V. LIBRETTI JR., his agents, servants, employees, attorneys, family members, those persons having any interest or control over the property described in Attachment A and those in active concert or participation with the above-named Defendant, shall not, without approval of this Court upon notice to the United States and an opportunity for the United States to be heard:

(a) alienate, dissipate, transfer, sell, assign, lease, pledge, encumber, or dispose of, in any manner, directly or indirectly;

(b) cause to be alienated, dissipated, transferred, sold, assigned, leased, pledged, encumbered, or disposed of in any manner; or

(c) take, or cause to be taken, any action which could have the effect of concealing or moving from the jurisdiction of this Court, or that would have the effect of depreciating, damaging or in any way diminishing the value of any property named in this Order.

5. It is further ORDERED that if any of the above-described property has been or is transferred or disposed of by any means, the above-named Defendant shall

account to the Court for the disposition and location of the property.

6. IT IS FURTHER ORDERED that the financial institutions named herein are directed to prevent and are otherwise enjoined from transferring (by wire or otherwise), conveying or disposing of any monies held in the bank accounts described in Attachment A.

IT IS FURTHER ORDERED that the financial institutions shall continue to receive and credit monies to the accounts identified in Attachment A and any such additional funds shall be subject to this Order and frozen pursuant to its terms. IT IS ORDERED that the respective financial institutions continue to receive and credit monies to this account. Any such additional funds shall be subject to this Order and frozen pursuant to its terms. It is further ORDERED that all financial institutions that maintain accounts identified herein shall immediately inform the government agents who serve the certified copies of this Order what each account balance is on the date of service and thereafter to the extent any account balance increases. The Court directs that Special Agents of the United States Internal Revenue Service, U. S. Customs Service, and the Drug Enforcement Administration are authorized to serve on the financial institutions named herein certified copies of this Order.

7. IT IS FURTHER ORDERED that the Defendant shall be served forthwith a copy of this Order and the papers of the United States seeking this Order.

8. IT IS FURTHER ORDERED that the Defendant will be allowed, in the alternative, to execute a satisfactory performance bond pursuant to 18 U.S.C. § 1963(d),

and the Court will make the determination if it is a satisfactory performance bond, but this Order will be in effect and until such time as the Court determines that the proffered bond is satisfactory.

9. This Order shall remain in effect until further Order of the Court or until the Court makes modification of the Order as appears necessary in the interest of justice and consistent with the purposes of 21 U.S.C. § 853 and 18 U.S.C. § 982.

DATED this 2d day of April, 1992.

/s/ illegible
UNITED STATES
DISTRICT COURT

CERTIFIED A TRUE COPY:

Clerk

By /s/ illegible
Deputy Clerk

ATTACHMENT A

A. REAL PROPERTY

All that lot or parcel of land, together with its buildings, improvements, fixtures, attachments and easements, located in Lot 39 of Star Valley Ranch, Plat 10, Lincoln County, Wyoming.

B. CONVEYANCES

Blue 1990 Toyota Celica GTS 2-door VIN JT2ST85N4L0035365

Silver/Maroon 1990 Chevrolet 4-wheel drive pickup with camper shell, VIN 1GCDK14KXLZ218430

C. CASH PROCEEDS

Approximatelly [sic] One Hundred Two Thousand Three Hundred Sixty Dollars ($102,360) in United States currency, in that such sum in aggregate was received in exchange for the distribution of controlled substances to-wit: marijuana, a Schedule I controlled substance, and cocaine, a schedule II controlled substance, and subsequently expended, spent, distributed or otherwise disposed of during the period beginning on or about January 1, 1982, and continuing to the present.

D. JEWELRY

Diamond ring given to Claudia Porter.

E. PROPERTY

1977 Windsor 14 X 70 Mobile Home VIN 3CRKFKR1HBEA, Title Nos. 04-0427637 and 04-39651 located in Green River, Wyoming and any rents or profits received thereon from this date forward.

F. BANK ACCOUNTS

1. Customer Account Number 008-666555 managed by Columbia Savings, 5850 South Ulster Circle

East, Englewood, CO 80111, 303-773-3444, which consists of:

a) IRA savings account.

2. Customer Account 60-09495, managed by Vectra Bank of Lakewood, CO 80215, 303-233-8400.

3. Customer Account 1423258, managed by State Bank of Green River, 125 W. Flaming Gorge Way, Green River, WY 82935, 307-875-7930

G. INVESTMENTS

1. Customer Account Number 16-11524406 managed by RAF Financial Corporation, 717 17th Street, Suite 2900, Denver, CO 80202, 303-292-1400, which consists of:

a) municipal bonds issued by Castle Pines North Net District at 9.75%

b) municipal bonds issued by FHLM Group at 8.25%, approximately $5,166.00.

2. GNMA Customer Pool Number 002941X, certificate number 30296455F managed by Barclay's American Mortgage Corporation, 5032 Parkway Plaza Boulevard, P.O. Box 33213, Charlotte, NC 28233, 704-357-7600.

3. GNMA Customer Pool Number 002941, certificate number 03082345SF managed by Barclay's American Mortgage Corporation, P.O. Box 31728, Charlotte, NC 28231.

4. GNMA Customer Pool Number 6994, certificate 2799045SF managed by Seattle Mortgage, 229 Queen Anne Avenue North, P.O. Box C, Seattle, WA 98109.

H. CASHIER'S CHECKS

1. First Federal Bank for Savings Cashier's Check #036886, dated November 15, 1991, in the amount of $542.

2. First Federal Bank for Savings Cashier's Check #036885, dated November 15, 1991, in the amount of $250.

3. First Federal Bank for Savings Cashier's Check 036887, dated November 15, 1991, in the amount of $2,890.

I. SAFE DEPOSIT BOX

1. Safe Deposit box number 2236 located at Countryside Bank; Countryside Court, 1190 South Elmhurst Road, Mt. Prospect, Illinois 60056, 708-593-0800.

2. Safe Deposit box number 5239 located at First Bank of Westland, 10403 West Colfax, Lakewood, Colorado 80215 303-232-3000.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

MOTION TO AMEND ATTACHMENT A TO THE RESTRAINING ORDER ISSUED BY THE COURT ON APRIL 2, 1992

(Filed Apr. 9, 1992)

COMES NOW the United States of America, by and through Gay Woodhouse, Assistant United States Attorney for the District of Wyoming, and moves that the attachment to the Restraining Order be amended to include one additional bank account based upon the following:

1. On April 2, 1992, the following account was not known to the United States: Account number 429-43-221, in the name of Dee Smith d/b/a Legal Research, Ltd., at Cole Taylor Bank, 350 West Dundee, Wheeling, IL 60090.

2. It has come to the attention of investigators for the United States that Joe Libretti asked his girlfriend, Claudia Porter, to transfer some of Libretti's funds to Joseph Kalady in care of Kalady's sister, Dee Smith d/b/a Legal Research, Ltd., in the amount of $8,000, which check was issued on or about February 6, 1992.

3. Joseph Kalady is a federal prisoner who was in the Laramie County Detention Facility with Joseph V. Libretti, Jr., during December 1991 and January 1992. Joseph Kalady is not an attorney; Kalady is not affiliated with an attorney; Kalady is not providing legal representation to Joseph V. Libretti, Jr.

4. Because of the transfer of these funds into the account of Dee Smith d/b/a Legal Research, Ltd., this account should, therefore, be subject to the Restraining Order and added to Attachment A thereto.

WHEREFORE, the United States prays that the attachment to the Restraining Order issued on April 2, 1992, be amended to include the above-referenced account.

DATED this 9th day of April, 1992.

Respectfully submitted,

RICHARD A. STACY
United States Attorney

By: /s/ Gay Woodhouse
GAY WOODHOUSE
Assistant United States Attorney

(Certificate Of Service Omitted In Printing)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

ORDER GRANTING UNITED STATES' MOTION TO AMEND RESTRAINING ORDER ATTACHMENT A

(Filed Apr. 9, 1992)

This matter having come before the Court upon the motion of the United States of America to amend the attachment to the Restraining Order entered on April 2, 1992, and the Court being fully advised in the premises,

IT IS, THEREFORE, HEREBY ORDERED that the account in the name of D. Smith d/b/a Legal Research, Ltd., which received the $8,000 check from Joseph V. Libretti, Jr., the funds held by Claudia Porter, account number 429-43-221, in the name of Dee Smith d/b/a Legal Research, Ltd., at Cole Taylor Bank, 350 West Dundee, Wheeling, IL 60090, be added to the attachment to the restraining order which is attached hereto and incorporated herein by this reference and hereby restrained from transfer, alienation, or diminution.

DATED this 8th day of April, 1992.

/s/ Illegible
CHIEF JUDGE
UNITED STATES
DISTRICT COURT

AMENDED ATTACHMENT A

A. REAL PROPERTY

All that lot or parcel of land, together with its buildings, improvements, fixtures, attachments and easements, located in Lot 39 of Star Valley Ranch, Plat 10, Lincoln County, Wyoming.

B. CONVEYANCES

Blue 1990 Toyota Celica GTS 2-door VIN JT2ST85N4L0035365

Silver/Maroon 1990 Chevrolet 4-wheel drive pickup with camper shell, VIN 1GCDK14KXLZ218430

C. CASH PROCEEDS

Approximately One Hundred Two Thousand Three Hundred Sixty Dollars ($102,360) in United States currency, in that such sum in aggregate was received in exchange for the distribution of controlled substances to-wit: marijuana, a Schedule I controlled substance, and cocaine, a schedule II controlled substance, and subsequently expended, spent, distributed or otherwise disposed of during the period beginning on or about January 1, 1982, and continuing to the present.

D. JEWELRY

Diamond ring given to Claudia Porter.

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1977 Windsor 14 X 70 Mobile Home VIN 3CRKFKR1HBEA, Title Nos. 04-0427637 and

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4. Customer Account 429-43-221, in the name of Dee Smith d/b/a Legal Research, Ltd., at Cole Taylor Bank, 350 West Dundee, Wheeling, IL 60090.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

	No. 92CR0006-B
	Ct. 1: 21 U.S.C. § 846 (Conspiracy to Possess With Intent to Distribute Cocaine and Marijuana)
UNITED STATES OF AMERICA,	**Ct. 2: 18 U.S.C. § 924(c)** (Use of Firearms in Relation To a Drug Trafficking Felony)
Plaintiff,	
v.	**Ct. 3: 18 U.S.C. § 1952(a)(3)** (Interstate Travel to Facilitate Drug Dealing)
JOSEPH V. LIBRETTI JR.,	**Ct. 4: 18 U.S.C. § 922(o)(1)** (Unlawful Possession of Machine Gun)
Defendant.	**Ct. 5: 21 U.S.C. § 854** (Using Drug Proceeds to Operate a Business)
	Ct. 6: 21 U.S.C. § 848 (Continuing Criminal Enterprise)
	Cts. 7, 8: 18 U.S.C. § 1956(a)(B)(i) (Money Laundering)
	Cts. 9,10: 18 U.S.C. § 1503 (Obstruction of Justice)
	Ct. 11: 21 U.S.C. § 841(a)(1) (Possession with Intent to Distribute Cocaine)

SUPERSEDING INDICTMENT

(Filed May 22, 1992)

The Grand Jury charges that:

COUNT I

From on or about January 1, 1982, through and including on or about March 24, 1992, in the District of Wyoming and elsewhere, JOSEPH V. LIBRETTI JR. did knowingly, intentionally, and unlawfully combine, conspire, confederate, and agree together with John J. Biggs (Biggs), Brian Salvatore Urso (Urso), Daniel Dixon (Dixon), Richard David Schlosser (Schlosser), and George Richard Sabell a/k/a "Chinzo", (Sabell) and with diverse other persons both known and unknown to the Grand Jury, to commit the following offenses against the United States:

(A) To knowingly, intentionally, and unlawfully possess with intent to distribute 5 kilograms or more of mixtures or substances containing detectible amounts of cocaine, a Schedule II Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A);

(B) To knowingly, intentionally, and unlawfully distribute 5 kilograms or more of mixtures or substances containing detectible amounts of cocaine, a Schedule II Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A);

(C) To knowingly, intentionally, and unlawfully possess with intent to distribute 100 kilograms or more of mixtures or substances containing detectible amounts of

marijuana, a Schedule I Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B); and

(D) To knowingly, intentionally, and unlawfully distribute 100 kilograms or more of mixtures or substances containing detectible amounts of marijuana, a Schedule I Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B).

MANNER AND MEANS OF THE CONSPIRACY

1. It was a part of the conspiracy that, beginning on or before January of 1982, LIBRETTI became involved in the business of unlawfully selling and distributing controlled substances, including cocaine and marijuana, to various customers in and around the Denver, Colorado, metropolitan area. Over the course of the conspiracy, as described in more detail in the paragraphs to follow, LIBRETTI established a well organized and highly profitable marijuana and cocaine distribution business in which he functioned as the principal organizer, manager, and supervisor, as well as the primary source of financing through which the organization purchased and obtained the controlled substances which were ultimately distributed by LIBRETTI and other members of the conspiracy. Other members of the conspiracy, including but not limited to Biggs, Urso, Dixon, Schlosser, and Sabell, acting at LIBRETTI's direction or pursuant to his management, supervision, or control, would perform various tasks associated with the acquisition, storage, concealment, and distribution of said cocaine and marijuana, as well as the concealment and laundering of the money representing the proceeds of said illegal drug distribution business.

2. It was a further part of the conspiracy that members of the conspiracy would make arrangements for the purchase of quantities of cocaine and marijuana from various individuals, both known and unknown to the Grand Jury, who were located in Colorado, Florida, and elsewhere. On some occasions LIBRETTI would himself make the arrangements for such purchases. On other occasions one of LIBRETTI's other co-conspirators would make such arrangements while acting on behalf of, or pursuant to the direction and supervision of, LIBRETTI.

3. It was a further part of the conspiracy that, on those occasions when supplies of cocaine were to be obtained from sources in Florida, various members of the conspiracy would travel to Florida and meet with said sources at pre-arranged locations such as the parking lots of large shopping malls. On these occasions, said members of the conspiracy would accept delivery of said cocaine, which was usually in quantities of at least 2 kilograms, and then transport it via automobile or otherwise to LIBRETTI's residence in Lakewood, Colorado.

4. It was a further part of the conspiracy that, when cocaine or marijuana would be obtained from sources within Colorado, LIBRETTI or other members of the conspiracy would take delivery of said cocaine and marijuana either at the residences of said sources or at LIBRETTI's residence in Lakewood, Colorado. These sources, among whom was Sabell, would ordinarily be paid for said cocaine (which again was usually obtained in 2-kilogram quantities) and marijuana (which was obtained in multi-pound quantities) at the time of delivery, either directly by LIBRETTI or by other co-conspirators, who would pay with money provided them by

LIBRETTI. These payments would ordinarily be in amounts of between $30,000 to $35,000 per kilogram for cocaine.

5. It was a further part of the conspiracy that, during the time LIBRETTI lived in his home in Lakewood, Colorado, cocaine and marijuana obtained from both the Florida sources and the Colorado sources would be delivered to LIBRETTI's residence in Lakewood, Colorado, by Biggs, Urso, or other members of the conspiracy. Upon its arrival at LIBRETTI's Lakewood, Colorado residence, LIBRETTI, sometimes with the assistance of other co-conspirators, would weigh said cocaine and other controlled substances, sometimes conduct tests on it to determine its purity, and then repackage it for resale.

6. It was a further part of the conspiracy that, once said cocaine and other controlled substances had been weighed, tested, and repackaged, LIBRETTI, sometimes with the assistance of other co-conspirators, would transport the controlled substances from his residence in Lakewood, Colorado, to various rented storage lockers and safe deposit boxes located throughout the Denver, Colorado metropolitan area, where they would be stored, often along with thousands of dollars in cash representing the proceeds from previous sales of such controlled substances. These controlled substances would remain in said safe deposit boxes or rental storage lockers until they were needed by LIBRETTI or other members of the conspiracy for redistribution and resale to their respective customers.

7. It was a further part of the conspiracy that LIBRETTI would also utilize two large heavy duty safes

located in his Lakewood, Colorado residence for the purpose of temporarily storing quantities of controlled substances and large sums of cash.

8. It was a further part of the conspiracy that, beginning in approximately June of 1989 when LIBRETTI moved from Lakewood, Colorado, to Green River, Wyoming, and continuing on or about March 24, 1992, LIBRETTI would direct, manage, and supervise the operation of his illegal drug distribution business from his various residences in Green River, Wyoming, from his place of employment, General Chemical Corporation, Green River, Wyoming, and from various detention facilities in Wyoming and Colorado. This would, in part, be accomplished in the following manner: Utilizing telephones located at his personal residences, at his office at General Chemical, and at the detention facilities, LIBRETTI would call (or receive calls from) Biggs and Urso, one or both of whom would be living in LIBRETTI's house in Lakewood, Colorado. Utilizing previously arranged code words, LIBRETTI would then direct Biggs or Urso to go to specific pay telephones located in Lakewood, Colorado. Then, often using a pay telephone himself in order to further minimize the possibility of law enforcement interception, LIBRETTI would talk to Biggs or Urso at said previously arranged pay phones and provide them with direction and supervision concerning the acquisition and disposition of controlled substances. The codes used by LIBRETTI, Biggs, and Urso to designate specific pay telephones in Lakewood, Colorado, included "Mr. Wong's" which referred to a specific pay telephone located at the China Garden Restaurant, 2098 Youngfield, Lakewood, Colorado, and "Mr. King's"

which referred to a specific pay telephone located at the King Soopers Grocery Store, 3400 Youngfield, Lakewood, Colorado.

9. It was a further part of the conspiracy that during those times when LIBRETTI was in Green River, Wyoming, Urso would, pursuant to the direction and supervision of LIBRETTI, purchase 2-kilogram quantities of cocaine from sources located in the Denver, Colorado metropolitan area, including Sabell. These transactions would usually occur at LIBRETTI's house in Lakewood, Colorado. On these occasions, upon being advised that LIBRETTI was ready to purchase an additional supply of cocaine, Sabell would meet with his supplier and obtain, on a "front" basis, 2 kilograms of cocaine in Lakewood, Colorado, where he would deliver it to Urso. Upon receiving the cocaine from Sabell, Urso would weigh it, place it inside one of the two heavy duty safes in the lower level of LIBRETTI's residence, and then remove from the safes the cash necessary to cover the purchase of the cocaine, which money had been left in the safes for this purpose by LIBRETTI. Urso would then deliver the cash to Sabell, who, in turn, would immediately deliver it to his source, who would be waiting for Sabell at a nearby location.

10. It was a further part of the conspiracy that LIBRETTI would, on a more or less weekly basis, travel from Green River, Wyoming, to Denver, Colorado, in order to meet with various members of his drug distribution organization. During the course of these trips, LIBRETTI would examine, weigh, and repackage controlled substances previously purchased at his direction by Urso; deliver quantities of cocaine and marijuana to

other members of the conspiracy, such as Schlosser, Urso, and Dixon, for resale to their respective customers; sell quantities of cocaine or marijuana to his own customers; and receive money representing previous sales of cocaine and marijuana by his co-conspirators and by their respective customers. In making such trips to Colorado, LIBRETTI would travel both by commercial airline and his own personal vehicles.

11. It was a further part of the conspiracy that, upon receiving cocaine and marijuana from LIBRETTI, or from Urso or other members of the conspiracy at LIBRETTI's direction, other members of the conspiracy, including Dixon, Urso, Biggs and Schlosser, would arrange for the resale of said controlled substances to their respective customers. These sales would ordinarily be for between $1,200 and $1,500 per ounce for cocaine and would often be on a "front" basis, whereby the cocaine would be delivered to said customers on credit based on the understanding that when the customers had themselves resold said cocaine, they would pay the proceeds of said sales to Dixon, Urso, Biggs, Schlosser, and LIBRETTI.

12. It was a further part of the conspiracy that LIBRETTI would hoard the proceeds generated by his and his co-conspirators' sales of cocaine and marijuana in secret hiding places such as safe deposit boxes and rented public storage lockers located in and around the Denver, Colorado, metropolitan area, in Green River, Wyoming, and in various other places such as, but not limited to, Chicago, Illinois.

13. It was a further part of the conspiracy that LIBRETTI and various other members of the conspiracy,

at the direction and with the assistance of LIBRETTI, would seize personal assets of their customers who had fallen behind in paying for supplies of cocaine or marijuana previously received by said customers. These personal assets, which included automobiles and musical instruments, would either be kept by or on behalf of LIBRETTI until said customers had paid off their drug debts, or would be sold by LIBRETTI, who would, in turn, keep the proceeds of said sales to cover said drug debts.

14. It was a further part of the conspiracy that LIBRETTI would obtain special federal firearms licenses enabling him to purchase a wide variety of otherwise restricted fully automatic weapons and silencers, as well as unrestricted conventional firearms such as semi-automatic rifles and handguns, ammunition, and firearms accessories. Once the firearms licenses were obtained, LIBRETTI would establish a firearms business through which, by purchasing hundreds of thousands of dollars worth of said firearms, he would be able to conceal and launder the proceeds of the drug distribution activities. LIBRETTI would store the firearms he obtained in his Lakewood, Colorado residence, in various rental storage lockers located in Colorado and Wyoming, and in his personal residences in Green River, Wyoming.

15. It was a further part of the conspiracy that LIBRETTI would also invest proceeds from his illegal drug distribution business in new vehicles, in parcels of land located in Wyoming and elsewhere, in his Lakewood, Colorado house, and in various securities and interest-generating accounts. LIBRETTI was, on occasion, assisted in making said investments by other members of

the conspiracy located outside Wyoming and Colorado who would, at LIBRETTI's direction, make said investments in a manner calculated to conceal LIBRETTI's interest and involvement. As compensation for rendering said assistance, said co-conspirators would receive a percentage of the interest generated by said investments.

16. It was a further part of the conspiracy that, in order to prevent the Government from seizing certain assets representing the proceeds from his organization's sales of illegal drugs, LIBRETTI would cause other co-conspirators and other persons acting as his agents to effect the transfer of legal title to said assets from LIBRETTI's name to the names of either other co-conspirators, friends or various members of his family.

17. It was a further part of the conspiracy that LIBRETTI would utilize his substantial collection of machine guns, silencers, and other weapons as a means of intimidating, and enforcing discipline among, the other participants in his drug distribution organization and in order to ensure that none of said participants would inform on LIBRETTI or other members of the conspiracy to law enforcement. This intimidation would occur in a variety of ways, including LIBRETTI openly displaying and on occasion openly firing said weapons from the back of his Lakewood, Colorado home when other members of the conspiracy were present; LIBRETTI on occasion actually pointing said weapons at other members of the conspiracy while they were present in his Lakewood, Colorado home; and other members of the conspiracy threatening their customers and suggesting that harm could come to said customers through the use of LIBRETTI's firearms or otherwise in the event said

customers should inform on LIBRETTI's drug organization to law enforcement.

18. It was a further part of the conspiracy that, upon learning that they were under investigation by law enforcement agencies in connection with their drug distribution organization, LIBRETTI and various other members of the conspiracy would correspond with each other in regard to the stories they should relate to law enforcement officers in order to conceal the nature, extent, and the identity of the participants in said drug distribution organization. In addition, LIBRETTI would contact and agree to pay for attorneys to represent the interests of the other co-conspirators in connection with law enforcement investigations or prosecutions of said co-conspirators.

19. During the course of the aforesaid conspiracy, LIBRETTI, Urso, Biggs, Schlosser, Dixon, Sabell, and the other members of the conspiracy were responsible for possessing and distributing approximately 60 kilograms of cocaine and approximately 600 pounds of marijuana.

OVERT ACTS

During the course of the aforesaid conspiracy and for the purpose of accomplishing the objects thereof, the following overt acts were committed:

1. From on or about spring of 1982, up to the beginning of 1983, LIBRETTI distributed marijuana on numerous occasions in quantities of 1/4 ounce to 1/4 pound to David Michael Corson in the Denver metropolitan area.

2. From on or about January of 1983, through and including on or about August of 1985, LIBRETTI distributed about 3 ounces of cocaine per month to Craig David Juliano.

3. Between on or about January of 1984, and on or about June of 1987, LIBRETTI distributed 1/8 ounce quantities of cocaine in the Denver metropolitan area to David Michael Corson on approximately 100 occasions.

4. On or about October 10, 1985, LIBRETTI sent a cashier's check in the amount of $9,000 to his brother, William Libretti, and requested that William Libretti obtain a second cashier's check in the amount of $9,000 from Talman Home Federal Savings and Loan Association of Illinois and return it to LIBRETTI.

5. Between on or about January of 1986, and on or about January of 1990, Urso, Dixon, and other co-conspirators distributed a total of approximately 10 kilograms of cocaine in the Denver metropolitan area to Michael Patrick Carson.

6. Between on or about January of 1987, and on or about September of 1987, David Michael Corson and LIBRETTI distributed cocaine in approximately 1/8 ounce quantities in the Denver metropolitan area, to Raymond Rivera on approximately 30 occasions.

7. On or about July 31, 1987, LIBRETTI rented locker #A054 at the Public Storage Lockers, 12351 West 44th Avenue, Wheatridge, Colorado, for the purpose of storing large quantities of cocaine, marijuana, and cash proceeds from the illegal drug sales undertaken by members of the conspiracy.

8. On or about September 12, 1987, LIBRETTI possessed with the intent to distribute approximately 1 pound of cocaine and approximately 600 pounds of marijuana, together with approximately $150,000 in drug proceeds, in a storage locker in Wheatridge, Colorado.

9. Between on or about March of 1988, and on or about March of 1990, LIBRETTI entered safe deposit box #5409 at the Jefferson Bank and Trust, Lakewood, Colorado on approximately 35 occasions for the purpose of storing or retrieving controlled substances and cash proceeds representing previous sales of controlled substances.

10. Between on or about June of 1989, and on or about August of 1991, LIBRETTI made approximately 57 airline flights from either Rock Springs, Wyoming to Denver, Colorado, or from Denver, Colorado to Rock Springs, Wyoming, which trips were for the purpose of LIBRETTI's traveling to and from Denver, Colorado to manage, supervise or otherwise control his illegal drug distribution organization.

11. On or about November of 1989, in Lakewood, Colorado, LIBRETTI delivered approximately 1/2 kilogram of cocaine to Schlosser.

12. On or about February 19, 1990, LIBRETTI distributed approximately 4 ounces of cocaine to Dixon.

13. On or about February 19, 1990, in Colorado, LIBRETTI seized Dixon's title to his Porsche automobile as collateral for approximately 4 ounces of cocaine which Dixon had previously received from LIBRETTI, but for which he had not yet paid LIBRETTI.

14. On or about February 19, 1990, in Colorado, Dixon distributed approximately 4 ounces of cocaine to Michael Carson.

15. On or about July 1, 1990, LIBRETTI distributed approximately 1/8 ounce of cocaine to Kimberly Barron.

16. On or about September of 1990, in Lakewood, Colorado, Urso delivered approximately $60,000.00 cash to Sabell in exchange for approximately 2 kilograms of cocaine.

17. On or about September of 1990, in Colorado, Urso delivered approximately 3 kilograms of cocaine to Niel Rubano, in order for Rubano to store it for him.

18. On or about September of 1990, in Colorado, Urso delivered approximately 2 kilograms of cocaine to LIBRETTI.

19. On or about January 9, 1991, LIBRETTI flew via commercial airline from Rock Springs, Wyoming to Denver, Colorado for the purpose of removing controlled substances and drug proceeds from certain safe deposit boxes in order to conceal them from discovery and seizure by law enforcement agencies.

20. On or about January 9, 1991, LIBRETTI had his safe deposit box at Bank Western in Lakewood, Colorado drilled, and removed contraband, illegal drug proceeds, and other evidence in order to conceal it from discovery and seizure by law enforcement.

21. On or about July 23, 1991, LIBRETTI utilized funds derived from illegal drug proceeds to purchase a $28,900.00 cashier's check from Vectra Bank in Lakewood, Colorado.

22. On or about August 23, 1991, LIBRETTI utilized funds derived from illegal drug proceeds to purchase a $65,000.00 cashier's check from Vectra Bank in Lakewood, Colorado.

23. On or about December 4, 1991, LIBRETTI possessed approximately 2 ounces of marijuana in his personal locker at the General Chemical Corporation, Green River, Wyoming.

24. On or about December 23, 1991, LIBRETTI executed a quit claim deed which purported to transfer title to certain real estate from himself to his father, Joseph V. Libretti Sr., in order to conceal his ownership of said property and to thus prevent the United States government from discovering and seizing it as proceeds of his illegal drug distribution organization.

25. On or about December 19, 1991, LIBRETTI caused a letter to be sent to the Seattle Mortgage Company in order to attempt to cause Seattle Mortgage Company to transfer ownership of a GNMA certificate from JOSEPH V. LIBRETTI JR. to Joseph V. Libretti Sr., for the purpose of concealing LIBRETTI's ownership interest in said GNMA certificate and to thus prevent the United States government from discovering and seizing said certificate as proceeds of his illegal drug distribution organization.

26. On or about April of 1991, LIBRETTI purchased 2 green military style ammunition cans from Jax Surplus in Fort Collins, Colorado, for the express purpose of utilizing those cans to store and conceal cocaine.

27. On or about September of 1991, LIBRETTI buried the aforementioned ammunition cans near a lot he owned at the Star Valley Ranch in Thayne, Wyoming, which said cans contained approximately 1½ kilograms of cocaine.

28. On or about April 26, 1991, LIBRETTI flew from Denver, CO to Chicago, IL.

29. On or about April 27, 1991, LIBRETTI rented safe deposit box number 2236 at the Countryside Bank, 1190 South Elmhurst Road, Mount Prospect, Illinois, for the express purpose of concealing evidence of his drug trafficking organization.

30. On or about April 27, 1991, LIBRETTI placed $28,060 cash collected from illegal drug trafficking into safe deposit box number 2236 at the Countryside Bank in Mount Prospect, IL.

31. On or about December 9, 1991, LIBRETTI called Claudia Porter and told her to close out his bank accounts at the WyoChem Federal Credit Union for the express purpose of transferring and concealing evidence (drug proceeds) of his drug-trafficking organization.

32. On or about December 30, 1991, LIBRETTI sent a letter to Claudia Porter detailing how Porter should surreptitiously enter the General Chemical Plant near Green River, Wyoming, and remove cash proceeds of his drug trafficking business from a locker where he had previously hidden them.

33. On or about February 3, 1992, LIBRETTI called Claudia Porter and directed her to remove $8,000 from the account he previously had her conceal funds from,

and mail it to Legal Research Ltd. in Chicago, Illinois for the express purpose of concealing those funds from potential seizure by the government.

34. On or about March 24, 1992, LIBRETTI sent a letter to Dee Smith, manager of Legal Research Ltd., in Chicago, Illinois, requesting that Smith make a rental payment on one of the safe deposit boxes rented by LIBRETTI to conceal evidence of his drug trafficking organization.

All in violation of 21 U.S.C. § 846.

COUNT II

Between on or about January of 1984, and on or about December 4, 1991, in the District of Wyoming and elsewhere, JOSEPH V. LIBRETTI JR. did knowingly and intentionally use and carry firearms during and in relation to a drug trafficking offense, to-wit, conspiracy to possess and distribute cocaine and marijuana as alleged in Count I of this Superseding Indictment, the allegations of which are hereby re-alleged and incorporated herein by reference, in that, throughout the duration of the conspiracy described in Count I, JOSEPH V. LIBRETTI JR. used and carried multiple conventional firearms, semi-automatic rifles and handguns, fully automatic weapons, and silencers for the purposes of intimidating and enforcing and ensuring the loyalty of various other subordinate members of the conspiracy; of ensuring that persons who purchased illegal drugs from himself or from various other members of the conspiracy would not inform on the organization to law enforcement; of safeguarding and

protecting supplies of controlled substances; and of safeguarding and protecting the cash proceeds generated by the sales of said controlled substances.

In violation of 18 U.S.C. § 924(c).

COUNT III

On or about January 9, 1991, in the District of Wyoming and elsewhere, JOSEPH V. LIBRETTI JR. knowingly and intentionally traveled in interstate commerce from the state of Wyoming to the state of Colorado with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, said activity being the unlawful possession and distribution of controlled substances in violation of 21 U.S.C. §§ 841(a)(1) and 846, and thereafter, JOSEPH V. LIBRETTI JR. did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity.

In violation of 18 U.S.C. § 1952(a)(3).

COUNT IV

On or about December 4, 1991, in the District of Wyoming, the defendant JOSEPH V. LIBRETTI JR. did knowingly, intentionally and unlawfully possess a machine gun, to-wit, an Actions Arms, UZI frame 9 mm model A, serial number SA 28093.

In violation of 18 U.S.C. §§ 922(o)(1).

COUNT V

Between on or about November 13, 1986, and on or about January 4, 1990, in the District of Wyoming and elsewhere, the Defendant JOSEPH V. LIBRETTI JR., having received income derived directly and indirectly from violations of 21 U.S.C. §§ 841, 846, and 848, as described in Counts I and VI of this Superseding Indictment, the allegations of each of which are hereby incorporated herein by reference, did invest directly and indirectly such income and the proceeds of such income in the establishment and operation of an enterprise, the activities of which affected interstate commerce, that is, during the time period indicated above, JOSEPH V. LIBRETTI JR. invested the income and the proceeds of income derived from his drug distribution organization as described in the above-referenced counts of this Superseding Indictment in the establishment and operation of Lakewood Firearms Supply of Lakewood, Colorado, a firearms business licensed by the United States Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, to sell fully automatic, automatic and conventional firearms, the activities of which business were undertaken and carried out by LIBRETTI in Colorado and in the District of Wyoming.

In violation of 21 U.S.C. § 854.

COUNT VI

From on or about January 1, 1984, through and including on or about the date of the return of this Superseding Indictment, in the District of Wyoming and elsewhere, JOSEPH V. LIBRETTI JR., the Defendant

herein, did knowingly, intentionally, and unlawfully engage in a continuing criminal enterprise, in that LIBRETTI did knowingly, intentionally, and unlawfully commit the following enumerated violations of 21 U.S.C. §§ 841(a)(1), 843(b), and 846, which violations were part of a continuing series of violations of said sections undertaken by LIBRETTI, in concert with at least 5 other persons with respect to whom LIBRETTI occupied a position as organizer, supervisor, and manager, and from which continuing series of violations LIBRETTI derived substantial income and resources:

1. From on or about January of 1984, through and including the date of the return of this Superseding Indictment, in the District of Wyoming and elsewhere, LIBRETTI combined, conspired, confederated, and agreed together with diverse other persons, including John J. Biggs (Biggs), Brian Salvatore Urso (Urso), Daniel Dixon (Dixon), Richard David Schlosser (Schlosser), George Richard Sabell (Sabell), and others both known and unknown to the Grand Jury, to commit felony violations of the federal Controlled Substances Act as alleged in Count I of the Superseding Indictment, the allegations of which are hereby incorporated herein by reference, in violation of 21 U.S.C. § 846.

2. Between on or about January of 1984, and on or about August of 1985, in Colorado, LIBRETTI knowingly, intentionally, and unlawfully distributed on a monthly basis approximately 3 ounces of cocaine per month to Craig David Juliano, in violation of 21 U.S.C. § 841(a)(1).

3. Between 1986 and January of 1990, in Colorado, during and in furtherance of the illegal drug conspiracy charged in Count I of this Superseding Indictment, and during the time when LIBRETTI, Urso, and Dixon were members of said conspiracy, Dixon unlawfully distributed approximately ten (10) kilograms of cocaine to Michael Carson, in violation of 21 U.S.C. § 841(a)(1).

4. From on or about January of 1987, through on or about August of 1987, in Colorado, LIBRETTI distributed cocaine, mostly in 1/8 ounce quantities, to Raymond Rivera on approximately 15 separate occasions, in violation of 21 U.S.C. § 841(a)(1).

5. On or about July 1987, in Colorado, LIBRETTI unlawfully possessed with the intent to distribute approximately 1 pound of cocaine, in violation of 21 U.S.C. § 841(a)(1).

6. On or about July 1987, in Colorado, LIBRETTI unlawfully distributed approximately 1/8 ounce of cocaine to Raymond Rivera and Kent Palmerton, in violation of 21 U.S.C. § 841(a)(1).

7. On or about September 12, 1987, LIBRETTI possessed with the intent to distribute approximately 1 pound of cocaine and approximately 600 pounds of marijuana in a storage locker in Wheatridge, Colorado, in violation of 21 U.S.C. § 841(a)(1).

8. On or about early November of 1989, in Colorado and elsewhere, LIBRETTI possessed with the intent to distribute approximately 2 kilograms of cocaine which he had received

from Biggs, Urso, and Sabell, in violation of 21 U.S.C. § 841(a)(1).

9. On or about the latter part of November of 1989, in Colorado and elsewhere, LIBRETTI possessed with the intent to distribute approximately 2 kilograms of cocaine which he had received from Biggs, Urso, and Sabell, in violation of 21 U.S.C. § 841(a)(1).

10. On or about early December of 1989, in Colorado and elsewhere, LIBRETTI possessed with the intent to distribute approximately 2 kilograms of cocaine which he had received from Biggs, Urso, and Sabell, in violation of 21 U.S.C. § 841(a)(1).

11. On or about the latter part of December of 1989, in Colorado and elsewhere, LIBRETTI possessed with the intent to distribute approximately 2 kilograms of cocaine which he had received from Biggs, Urso, and Sabell, in violation of 21 U.S.C. § 841(a)(1).

12. On or about June 3, 1989, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully caused the use of a communication facility, in that LIBRETTI caused a person in Chicago, Illinois to mail to him, via United States Postal Service, a bank check in the amount of $10,000.00, which amount represented the proceeds from previous illegal sales of controlled substances, in violation of 21 U.S.C. § 843(b) and 18 U.S.C. § 2.

13. On or about July 5, 1989, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding

Indictment, unlawfully caused the use of a communication facility, in that LIBRETTI caused a person in Chicago, Illinois to mail to him, via United States Postal Service, a personal check in the amount of $11,000.00, which amount represented the proceeds from previous illegal sales of controlled substances, in violation of 21 U.S.C. § 843(b) and 18 U.S.C. § 2.

14. On or about early January of 1990, in Colorado and elsewhere, LIBRETTI possessed with the intent to distribute approximately 2 kilograms of cocaine which he had received from Biggs, Urso, and Sabell, in violation of 21 U.S.C. § 841(a)(1).

15. On or about the latter part of January of 1990, in Colorado and elsewhere, LIBRETTI possessed with the intent to distribute approximately 2 kilograms of cocaine which he had received from Biggs, Urso, and Sabell, in violation of 21 U.S.C. § 841(a)(1).

16. On or about September of 1990, in Colorado and elsewhere, LIBRETTI possessed with the intent to distribute approximately 2 kilograms of cocaine which he had received from Urso, Sabell, and Niel Rubano, in violation of 21 U.S.C. § 841(a)(1).

17. On or about September 24, 1990, in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully used a communication facility, in that LIBRETTI utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the King Soopers Grocery Store pay telephone in Wheatridge, Colorado, in violation of 21 U.S.C. § 843(b).

18. On or about September 24, 1990, at approximately 12:14 p.m., in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully used a communication facility in that LIBRETTI utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the China Garden Restaurant pay telephone in Lakewood, Colorado, in violation of 21 U.S.C. § 843(b).

19. On or about September 24, 1990, at approximately 5:05 p.m., in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully used a communication facility in that LIBRETTI utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the China Garden Restaurant pay telephone in Lakewood, Colorado, in violation of 21 U.S.C. § 843(b).

20. On or about November 29, 1990, in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully used a communication facility in that LIBRETTI utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the China Garden Restaurant pay telephone in Lakewood, Colorado, in violation of 21 U.S.C. § 843(b).

21. On or about November 30, 1990, in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charge in Count I of this Superseding Indictment, unlawfully used a communication facility, in that LIBRETTI utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the China Garden Restaurant pay telephone in Lakewood, Colorado, in violation of 21 U.S.C. § 843(b).

22. On or about March 8, 1990, at 9:11 p.m. in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully used a communication facility, in that LIBRETTI utilized a telephone to communicate details of the illegal drug conspiracy by calling an unidentified co-conspirator at the King Soopers Grocery Store pay telephone in Wheatridge, Colorado, in violation of 21 U.S.C. § 843(b).

23. On or about March 8, 1990, at 10:11 p.m. in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully used a communication facility, in that LIBRETTI utilized a telephone to communicate details of the illegal drug conspiracy by calling an unidentified co-conspirator at the King Soopers Grocery Store pay telephone in Wheatridge, Colorado, in violation of 21 U.S.C. § 843(b).

24. On or about August 21, 1991, in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug

conspiracy identified in Count I of this Superseding Indictment, unlawfully used a communication facility to send a letter to Urso by way of the United States Postal Service, which letter detailed how Urso should deny and disclaim to investigating law enforcement authorities their (LIBRETTI's and Urso's) personal association and their illegal agreement with respect to the conspiracy charged in Count I of this Superseding Indictment, in violation of 21 U.S.C. § 843(b).

25. On or about September 4, 1991, in the District of Wyoming and elsewhere, LIBRETTI, for the purpose of facilitating the illegal drug conspiracy charged in Count I of this Superseding Indictment, unlawfully used a communication facility to send a letter to Urso by way of Federal Express overnight package service. Said letter was sent by LIBRETTI to Urso under the pretense that the letter was from an attorney in Cheyenne, Wyoming, and included information on how Urso could testify at the grand jury investigating LIBRETTI and Urso, their personal partnership, and their illegal agreement with respect to the illegal drug conspiracy charged in Count I of this Superseding Indictment, in violation of 21 U.S.C. § 843(b).

26. From on or about January 9 of 1991 and through and including March 31, 1992, LIBRETTI, possessed with intent to distribute approximately two kilograms of cocaine, most of which LIBRETTI ultimately buried near property he owned near Thayne, Wyoming, in violation of 21 U.S.C. 841(a)(1).

All of which is in violation of 21 U.S.C. § 848.

FORFEITURE

Upon the conviction of the Defendant, JOSEPH V. LIBRETTI JR., for engaging in a continuing criminal enterprise as charged in this Count, in violation of 21 U.S.C. § 848, the United States is entitled to forfeiture of all property of any kind constituting or derived from proceeds LIBRETTI obtained directly and indirectly by engaging in said continuing criminal enterprise; all property of any kind which was used and intended for use in any manner or part to commit or to facilitate the commission of this continuing criminal enterprise including but not limited to the following:

1. **REAL PROPERTY**

All that lot or parcel of land, together with its buildings, improvements, fixtures, attachments and easements, located in Lot 39 of Star Valley Ranch, Plat 10, Lincoln County, Wyoming.

2. **CONVEYANCES**

Blue 1990 Toyota Celica GTS 2-dr VIN JT2ST85N4L0035365 Silver/Maroon 1990 Chevrolet 4-wheel drive pickup with camper shell, VIN lGCDK14KXLZ218430.

3. **CASH PROCEEDS**

Approximately $102,360 00 in United States currency, in that such sum in aggregate was received in exchange for the distribution of controlled substances to wit: marijuana, a Schedule I controlled substance and cocaine, a

Schedule II controlled substance, and subsequently expended, spent, distributed or otherwise disposed of during the period beginning on or about January 1, 1982, and continuing to the present.

Approximately $12,000.00 cash which JOSEPH V. LIBRETTI JR. stored inside a paint can at his and Claudia Porter's house, 500 Monroe Avenue, #50, Green River, Wyoming 82935, $5,100.00 of which was recovered from Porter on April 22, 1992.

Approximately $7,635.00 sent to Dee Smith, d/b/a Legal Research, Ltd., 2314 North Campbell Street, Chicago, Illinois 60747, from or on behalf of JOSEPH V. LIBRETTI JR.

4. **CURRENCY AND JEWELRY**

Diamond ring and wedding band set given to Claudia Porter.

All United States currency and travelers checks recovered from the storage lockers, home, person, gun safes, lockers at LIBRETTI's work location, and LIBRETTI's person.

5. **PROPERTY**

1977 Windsor 14 x 70 Mobile Home VIN 3CRKFKR1HBEA, Title Nos. 04-0428638 and 04-39651 located in Green River, Wyoming and any rents or profits received thereon from this date forward.

MacIntosh Computer System, Model SE, Serial No. F833A, DYM5011, and Imagewriter II printer, Serial No. 1567975, complete with all accessories and disks.

6. BANK ACCOUNTS

Customer Account Number 008-666555 managed by Columbia Savings, 5850 South Ulster Circle East, Englewood, Colorado 80111, 303-773-3444, which consists of an IRA savings account.

Customer Account 60-09495, managed by Vectra Bank of Lakewood, Colorado 80215, 303-233-8400.

Customer Account 1423258, managed by State Bank of Green River, 125 W. Flaming Gorge Way, Green River, Wyoming 82935, 307875-7930.

Customer Account 429-43-221, in the name of Dee Smith d/b/a Legal Research, Ltd., at Cole Taylor Bank, 350 West Dundee, Wheeling, Illinois 60090.

7. INVESTMENTS

GNMA Certificate Number 2799045SF in the name of JOSEPH V. LIBRETTI, investor number 00006994, pool number 002941, disbursed by Seattle Mortgage Company, 229 Queen Anne Avenue North, Seattle, Washington 98109.

GNMA Certificate Number 03082345SF in the name of JOE LIBRETTI, pool number 002941, disbursed by Barclays American Mortgage Corporation, P. O. Box 31728, Charlotte, North Carolina 28231.

Customer Account Number 16-11524406 managed by RAF Financial Corporation, 717 17th Street, Suite 2900, Denver, Colorado 80202, 303-292-1400, which consists of:

a) municipal bonds issued by Castle Pines North Net District at 9.75%;

b) municipal bonds issued by FHLM Group at 8.25%.

8. ADDITIONAL CASHIER'S CHECKS

First Federal Bank for Savings Cashier's Check #036886, dated November 15, 1991, in the amount of $542.

First Federal Bank for Savings Cashier's Check #036885, dated November 15, 1991, in the amount of $250.

First Federal Bank for Savings Cashier's Check #036887, dated November 15, 1991, in the amount of $2,890.

9. CONTENTS OF SAFE DEPOSIT BOXES

Safe Deposit box number 2236 located at Countryside Bank, Countryside Court, 1190 South Elmhurst Road, Mt. Prospect, Illinois 60056, 708-593-0800.

Safe Deposit box number 5239 located at First Bank of Westland, 10403 West Colfax, Lakewood, Colorado 80215 303-232-3000.

All of which is in violation of 21 U.S.C. § 848 and for which forfeiture is provided in 21 U.S.C. § 853.

COUNT VII

On or about June 3, 1989, in the District of Wyoming and elsewhere, JOSEPH V. LIBRETTI JR., did knowingly and willfully cause his brother, William Richard Libretti, to conduct a financial transaction affecting interstate commerce and involving the proceeds of a specified unlawful activity, that is, the unlawful possession and distribution of controlled substances in violation of 21 U.S.C. §§ 841(a)(1) and 846, with the knowledge that the property involved in said financial transaction in fact represented the proceeds of said specified unlawful activity, and with the knowledge that said transaction was designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and control of the proceeds of said unlawful activity, to-wit, that on or about June 3, 1989, LIBRETTI caused his brother, William Richard Libretti, to purchase a bank check in the amount of $10,000.00 from the First Nationwide Bank of Chicago, Illinois, an institution whose activities affect interstate commerce, using proceeds from previous sales of cocaine and marijuana by LIBRETTI's drug distribution organization, and, following the purchase of said bank check, William Richard Libretti, acting pursuant to LIBRETTI's direction, mailed said bank check to LIBRETTI in Green River, Wyoming, via the U. S. Postal Service.

In violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2(b).

COUNT VIII

On or about July 5, 1989, in the District of Wyoming and elsewhere, JOSEPH V. LIBRETTI JR., did knowingly

and willfully cause his brother, William Richard Libretti, to conduct a financial transaction affecting interstate commerce and involving the proceeds of a specified unlawful activity, that is, the unlawful possession and distribution of controlled substances in violation of 21 U.S.C. §§ 841(a)(1) and 846, with the knowledge that the property involved in said financial transaction in fact represented the proceeds of said specified unlawful activity, and with the knowledge that said transaction was designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and control of the proceeds of said unlawful activity, to-wit, on or about July 5, 1989, LIBRETTI caused his brother, William Richard Libretti, to draw a personal check in the amount of $11,000.00 on an account in his (William Richard Libretti's) name at the Cragin Federal Bank for Savings of Chicago, Illinois, an institution whose activities affect interstate commerce, the funds of which account represented the proceeds from previous sales of cocaine and marijuana by LIBRETTI's drug distribution organization, and, likewise acting pursuant to LIBRETTI's direction, William Richard Libretti thereafter mailed said personal check to LIBRETTI in Green River, Wyoming via the U.S. Postal Service.

In violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2(b).

COUNT IX

On or about November 21, 1991, in the District of Wyoming, the Defendant, JOSEPH V. LIBRETTI JR., did corruptly endeavor to obstruct, and impede the due administration of justice in regard to a federal Grand Jury

in the District of Wyoming, in that, on or about the above specified date, LIBRETTI gave disguised and misleading handwriting exemplars of his signature and handwriting in response to a federal grand jury subpoena.

In violation of 18 U.S.C. § 1503.

COUNT X

Between on or about August 21, 1991, and through and including September 3, 1991, in the District of Wyoming and elsewhere, the Defendant, JOSEPH V. LIBRETTI JR., did corruptly endeavor to influence, obstruct, and impede the due administration of justice in regard to a federal Grand Jury in the District of Wyoming, in that LIBRETTI, on or about the above specified dates, directed Brian Salvatore Urso to provide false information in connection with a federal Grand Jury investigation into the facts and circumstances relating to the charges set forth in Counts I and VI of this Superseding Indictment.

In violation of 18 U.S.C. § 1503.

COUNT XI

Between on or about April, 1991, and through and including on or about March 31, 1992, in the District of Wyoming and elsewhere, the Defendant JOSEPH V. LIBRETTI JR., did knowingly, unlawfully, and intentionally possess with intent to distribute approximately 1.6 kilograms of cocaine, a schedule II controlled substance;

In violation of 21 U.S.C. § 841(a)(1).

A TRUE BILL

/s/ Jinneta Cook
Foreperson

/s/ Richard A. Stacy/HP
RICHARD A. STACY
United States Attorney

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

BILL OF PARTICULARS AND SECOND MOTION TO AMEND ATTACHMENT A TO THE RESTRAINING ORDER ISSUED BY THE COURT ON APRIL 2, 1992

(Filed Sep. 15, 1992)

COMES NOW the United States of America, by and through Gay Woodhouse, Assistant United States Attorney for the District of Wyoming, and moves that the attachment to the Restraining Order be amended to include two properties owned jointly by Joseph V. Libretti Jr. and Claude J. Cismaru and to include the funds transferred to others to conceal it from forfeiture described below:

1. It has come to the attention of the United States that the equity position of Joseph v. Libretti Jr. has increased dramatically in the following properties which are owned by him jointly with Claude J. Cismaru and which properties were purchased with proceeds of drug activities engaged in by the Defendant:

a. A condominium located at 9430 West Ontario Drive, Littleton, Colorado 80123, more particularly described as follows: Lot 28, Block 2, Dutch Ridge Subdivision Filing #2, Jefferson County, Colorado.

b. A condominium located at 9328 West Ontario Drive, Littleton, Colorado 80123, more particularly

described as follows: Lot 133, Block 1, Dutch Ridge Subdivision Filing #1, Exemption Survey #1, Jefferson County, Colorado.

2. Because of a substantial increase in equity in these condominiums and the fact that the transfer of such properties would net a profit to the Defendant, they should be subject to the Restraining Order and added to Attachment A thereto.

WHEREFORE, the United States prays that the attachment to the Restraining Order issued on April 2, 1992, be amended to include the above-described real property.

DATED this 14th day of September, 1992.

Respectfully submitted,

RICHARD A. STACY
United States Attorney

By: /s/ Gay Woodhouse
GAY WOODHOUSE
Assistant United States Attorney

(Certificate Of Service Omitted In Printing)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

ORDER GRANTING UNITED STATES' SECOND MOTION TO AMEND RESTRAINING ORDER ATTACHMENT A

(Filed Sep. 15, 1992)

This matter having come before the Court upon the motion of the United States of America to amend the attachment to the Restraining Order entered on April 2, 1992, and the Court being fully advised in the premises,

IT IS, THEREFORE, HEREBY ORDERED that the following-described properties and funds:

a. All that lot or parcel of land, together with its building improvements, fixtures, attachments and easements, located at 9430 West Ontario Drive, Littleton, Colorado 80123, more particularly described as follows: Lot 28, Block 2, Dutch Ridge Subdivision Filing #2, Jefferson County, Colorado.

b. All that lot or parcel of land, together with its building improvements, fixtures, attachments and easements, located at 9328 West Ontario Drive, Littleton, Colorado 80123, more particularly described as follows: Lot 133, Block 1, Dutch Ridge Subdivision Filing #1, Exemption Survey #1, Jefferson County, Colorado.

DATED this 15th day of September, 1992.

/s/ Illegible
UNITED STATES
DISTRICT COURT JUDGE

AMENDED ATTACHMENT A

A. REAL PROPERTY

1. All that lot or parcel of land, together with its buildings, improvements, fixtures, attachments and easements, located in Lot 39 of Star Valley Ranch, Plat 10, Lincoln County, Wyoming.

2. All that lot or parcel of land, together with its building improvements, fixtures, attachments and easements, located at 9430 West Ontario Drive, Littleton, Colorado 80123, more particularly described as follows: Lot 28, Block 2, Dutch Ridge Subdivision Filing #2, Jefferson County, Colorado.

3. All that lot or parcel of land, together with its building improvements, fixtures, attachments and easements, located at 9328 West Ontario Drive, Littleton, Colorado 80123, more particularly described as follows: Lot 133, Block 1, Dutch Ridge Subdivision Filing #1, Exemption Survey #1, Jefferson County, Colorado.

B. CONVEYANCES

Blue 1990 Toyota Celica GTS 2-door VIN JT2ST85N4L0035365

Silver/Maroon 1990 Chevrolet 4-wheel drive pickup with camper shell, VIN 1GCDK14KXLZ218430

C. CASH PROCEEDS

Approximatelly [sic] One Hundred Two Thousand Three Hundred Sixty Dollars ($102,360) in United States currency, in that

such sum in aggregate was received in exchange for the distribution of controlled substances to-wit: marijuana, a Schedule I controlled substance, and cocaine, a schedule II controlled substance, and subsequently expended, spent, distributed or otherwise disposed of during the period beginning on or about January 1, 1982, and continuing to the present.

D. JEWELRY

Diamond ring given to Claudia Porter.

E. PROPERTY

1977 Windsor 14 X 70 Mobile Home VIN 3CRKFKR1HBEA, Title Nos. 04-0427637 and 04-39651 located in Green River, Wyoming and any rents or profits received thereon from this date forward.

F. BANK ACCOUNTS

1. Customer Account Number 008-666555 managed by Columbia Savings, 5850 South Ulster Circle East, Englewood, CO 80111, 303-773-3444, which consists of:

   a) IRA savings account.

2. Customer Account 60-09495, managed by Vectra Bank of Lakewood, CO 80215, 303-233-8400.

3. Customer Account 1423258, managed by State Bank of Green River, 125 W. Flaming Gorge Way, Green River, WY 82935, 307-875-7930

4. Customer account number 429-43-221, in the name of Dee Smith d/b/a Legal Research,

Ltd., at Cole Taylor Bank, 350 West Dundee, Wheeling, IL 60090.

G. INVESTMENTS

1. Customer Account Number 16-11524406 managed by RAF Financial Corporation, 717 17th Street, Suite 2900, Denver, CO 80202, 303-292-1400, which consists of:

   a) municipal bonds issued by Castle Pines North Net District at 9.75%

   b) municipal bonds issued by FHLM Group at 8.25% approximately $5,166.00.

2. GNMA Customer Pool Number 002941X, certificate number 30296455F managed by Barclay's American Mortgage Corporation, 5032 Parkway Plaza Boulevard, P.O. Box 33213, Charlotte, NC 28233, 704-357-7600.

3. GNMA Customer Pool Number 002941, certificate number 03082345SF managed by Barclay's American Mortgage Corporation, P.O. Box 31728, Charlotte, NC 28231.

4. GNMA Customer Pool Number 6994, certificate 2799045SF managed by Seattle Mortgage, 229 Queen Anne Avenue North, P.O. Box C, Seattle, WA 98109.

H. CASHIER'S CHECKS

1. First Federal Bank for Savings Cashier's Check #036886, dated November 15, 1991, in the amount of $542.

2. First Federal Bank for Savings Cashier's Check #036885, dated November 15, 1991, in the amount of $250.

3. First Federal Bank for Savings Cashier's Check #036887, dated November 15, 1991, in the amount of $2,890.

I. SAFE DEPOSIT BOX

1. Safe Deposit box number 2236 located at Countryside Bank, Countryside Court, 1190 South Elmhurst Road, Mt. Prospect, Illinois 60056, 708-593-0800.

2. Safe Deposit box number 5239 located at First Bank of Westland, 10403 West Colfax, Lakewood, Colorado 80215 303-232-3000.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

Count(s): VI of the Indictment
21 U.S.C. § 848
Class: Felony
Penalty:
20 mandatory minimum to life confinement
$2,000,000 fine, $50 special assessment
and forfeiture prescribed in
21 U.S.C. § 853
(fine)
N/A
(total restitution)

PLEA AGREEMENT

(Filed Oct. 6, 1992)

United States of America, by and through Gay Woodhouse, Assistant United States Attorney for the District of Wyoming, and Defendant, JOSEPH V. LIBRETTI, JR., personally and by his attorney, Craig, L. Truman, submit the following plea agreement and stipulation of facts:

1. The Defendant agrees to plead guilty to engaging in a continuing criminal enterprise in Count Six of the Indictment charging a violation of 21 U.S.C. § 848.

2. The maximum statutory penalty for the offense is life imprisonment, not more than a $2,000,000.00 fine, or both, a $50.00 mandatory special assessment, and forfeiture of all known assets as prescribed in 21 U.S.C. § 853 and assets which are discovered at any later time up to $1,500,000.

3. The Defendant acknowledges that by pleading guilty to Count Six of the Indictment, he waives various constitutional rights, including the right to a jury trial and a speedy trial.

4. The Defendant further acknowledges that he has read this Plea Agreement and the Indictment, setting forth the aforementioned charges against him, that these charges have been fully and carefully explained to him by his attorney, and that he fully understands both the nature and the elements of the crimes for which he has been charged, and the maximum and minimum penalties to which he could be subjected in the event he is ultimately convicted on said charges.

5. The Defendant agrees to give the Court a complete, truthful and factual basis for the entry of his guilty plea.

6. The United States agrees that no additional charges arising from these incidents or for any violation of the law now presently known to the United States will be filed in the District of Wyoming.

7. The United States agrees to recommend at the time of sentencing that the Defendant receive not more than the mandatory minimum sentence of 20 years as required by 21 U.S.C. § 848.

8. The Defendant agrees to pay the special assessment amount of $50.00 at the time of sentencing.

9. Defendant agrees to identify all assets that were used to facilitate his criminal activity. Defendant further agrees that he will provide complete financial disclosure

forms requiring the listing of assets and financial interests.

10. The defendant agrees to transfer his right, title, and interest in all of his assets to the Division of Criminal Investigation of the Wyoming Attorney General including, but not limited to: all real estate; all personal property, including guns, the computer, and every other item now in the possession of the United States; all bank accounts, investments, retirement accounts, cash, cashier's checks, travelers checks and funds of any kind.

11. The parties understand that the sentencing judge is neither a party to nor bound by this plea agreement and is free to impose whatever sentence he feels is justified.

12. Nothing in this agreement shall limit the United States in its comments in and responses to any sentencing and post-sentencing matters.

13. The Defendant agrees that he is pleading guilty because he is, in fact, guilty and not for the purpose of delay or to protect business associates or family members. In addition, the Defendant agrees not to attempt to withdraw his plea of guilty under any circumstances and that there are no reasons which support a withdrawal of his guilty plea.

14. It is agreed that no additional promises, agreements, and conditions have been entered into other than those set forth in this document and none will be entered into unless in writing and signed by all parties.

15. The defendant has been advised of § 1B1.3 of the Sentencing Guidelines regarding the use of relevant conduct and establishing sentence and has read the advisement regarding supervised release attached to this statement.

Dated this 5th day of October, 1992.

/s/ Joseph V. Libretti, Jr.
JOSEPH V. LIBRETTI, JR.
Defendant

/s/ Craig L. Truman
CRAIG L. TRUMAN
Attorney for Defendant

/s/ Gay Woodhouse
GAY WOODHOUSE
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,	)	
Plaintiff	)	
V.	)	No. 92CR0006B
JOSEPH V. LIBRETTI, JR.,	)	
Defendant.	)	

Notice to Defendant regarding supervised release: Guideline sentencing requires a term of supervised release in connection with a sentence to confinement of

more than one (1) year, and the Court may impose supervised release in any other case.

Supervised release will follow the term of confinement, may be for any term of years and, if justified by the Court, may be for the balance of the Defendant's life. Violation of supervised release may result in confinement for the term of years imposed on supervised release which would be in addition to time previously served in connection with the original offense, with no credit given for the time spent on supervision.

5D3-1 - 5D3.2 - 5D3.3 - 7A1.3 - 7A1.4(b)

18 U.S.C. § 3583

/s/ Joseph V. Libretti, Jr.
JOSEPH V. LIBRETTI, JR.
Defendant

/s/ Craig L. Truman
CRAIG L. TRUMAN
Attorney for Defendant

/s/ Gay Woodhouse
GAY WOODHOUSE
Assistant United States Attorney
Attorney for the Government

[TRANSCRIPT OF PROCEEDINGS, CHANGE OF PLEA]

[3] PROCEEDINGS

(Change of plea proceedings

commenced 10:41 a.m., October 5, 1992.)

THE COURT: Good morning, ladies and gentlemen.

MS. WOODHOUSE: Good morning, Your Honor.

THE COURT: At this time do you care to report to the Court the status of this matter?

MS. WOODHOUSE: Yes, I do, Your Honor. The United States and the defendant have entered into a plea agreement in this matter. This essentially is a change of plea hearing. The plea agreement basically provides that the defendant Joseph E. Libretti, Jr. will plead guilty to Count 6 of the Indictment which alleges a violation of 21 USC Section 848, which is engaging in a continuing criminal enterprise in connection with drug distribution network. It carries a penalty of a 20-year mandatory minimum sentence to life confinement, a $2 million fine, a $50 special assessment and forfeiture as prescribed in 21 USC Section 853.

The defendant has agreed to plead guilty to Count 6. He has also agreed to forfeit all the property now in the custody of the United States, to report to us additional property which we may not know about and to forfeit that property as well and to transfer it by virtue of his plea on the record here today.

[4] The United States has agreed that we will recommend that the defendant receive not more than the mandatory minimum sentence of 20 years as required by 21 USC Section 848.

We are ready to proceed, Your Honor.

THE COURT: Very well.

MS. WOODHOUSE: Your Honor, we will also dismissal the remaining counts at the time of sentencing.

THE COURT: Very well. Now, Mr. Truman, you've heard the prosecutor's recitation of the terms of the plea agreement. Is that substantially correct from your standpoint?

MR. TRUMAN: That is correct, Your Honor. I would only advise the Court of one or two other matters.

THE COURT: What is that.

MR. TRUMAN: There is now pending against Mr. Libretti in the District of Colorado a silencer count. This Court nor this United States Attorney has any power over that. However, I've been informed recently by Assistant Public Defender Rick Williamson of the District of Colorado that Assistant United States Attorney George Buck has indicated to him that they will be dismissing that count.

I want the Court to know that that has been contemplated. It's not part of the plea agreement, but I [5] think in the terms of completeness, the Court should know that is also in the circumstances. Otherwise, Your Honor, that which the government has said is substantially our plea agreement.

THE COURT: I think that is probably correct. I think we're all aware of the fact that the United States Attorney of the District of Colorado is somewhat independent, at least as far as Congress is concerned, and I'm not sure that he would necessarily recognize the recommendations of the United States Attorney for the District of Wyoming, but they can recommend dismissal. Is that your position?

MS. WOODHOUSE: Yes, Your Honor.

THE COURT: Very well. Now, Mr. Libretti, you appear before me for the purposes of a change of plea. And before we go further with the change of plea, I must remind you of your constitutional rights that I'm sure you're aware of, but I'll recite them for the benefit of the record.

First, you have a right to a speedy and public jury trial, which we're in the middle of. You have a right to be presumed to be innocent at that trial, and this presumption of innocence will stay with you to the very end of the trial.

The United States is required to prove its case [6] against you by proof beyond a reasonable doubt, and if you or your attorneys feel that the case has not in any way been proved against you beyond a reasonable doubt, you're entitled to be acquitted by a motion at the end of the government's case. Obviously, the Court would have to rule on that at that time.

You have confronted many of the witnesses against you, and you're entitled to confront the rest of them against you. And by that I mean to see them, to hear

them, to have Mr. Truman or Mrs. Miller cross-examine them.

In addition to that, you're, of course, entitled to your own witnesses, and you can have subpoenaed any witnesses that you want or any evidentiary exhibits that you want. And the aim and object of all of this is that this jury that has been presently selected can decide as fairly as we can have them do it your guilt or innocence.

Now, if you plead guilty, it's going to be the end of this trial. We're not going to go through with this until the end of this week, or next weeks, and the jury is not going to decide whether you're guilty or not. I'll dismiss them after this, and that will be that. You'll have to be then interviewed by the probation office. Mr. Bonham is here, our chief probation officer in court. And the interview will be arranged and then a presentence report, which will probably consist of 20 or more [7] single-spaced typewritten pages, takes about a month to prepare one of those.

The probation office checks with everybody and doesn't leave a stone unturned. Our probation office is, I think, the best in this circuit, and probably one of the best in the United States.

You and Mr. Truman will have the opportunity to review that to be sure that it's substantially correct, and you'll have an opportunity to file objections to it, which I'll hear at the time of sentencing, but you will not have a continuing trial. You'll just be brought back for purposes of sentencing.

And I think you heard Mrs. Woodhouse tell you what the minimum sentences are, the consequences of your plea. These include a minimum sentence of 20 years, and it could be until life. In addition to that, you could be fined $2 million and be required to pay a special assessment of $50, but all the property that's described in this Count 6 could be forfeited to the United States. So, obviously, the consequences of this are very serious.

Do you feel you understand the consequences of it?

THE DEFENDANT: There is only one part I didn't understand. They said that they can take up to one and a half million dollars from me any time. Let's say 20 years [8] from now I get a job, I get a paycheck. They can come and take that?

MR. TRUMAN: Your Honor, may I speak to that?

THE COURT: Yes.

MR. TRUMAN: The purpose, as I understand of that circumstance, is that Mr. Libretti is going to tell us under oath that all the assets that he has have now been made known to the government. The reason for that clause was that if in the next couple of years should a safety deposit box with assets that Mr. Libretti –

THE COURT: Swiss bank account or something that became known.

MR. TRUMAN: Prior to today's date become known, that the government may seize that.

THE COURT: Yeah.

MR. TRUMAN: Your Honor, I think it is fair to state from this date forward that Mr. Libretti earns it, if it's earned in a lawful manner.

THE COURT: I think 20 years from now should you have an inheritance from your family that is not drug tainted, and I think that property would be free of forfeiture. But I think that as Mr. Truman says, if something came to light that you had a secret bank account on the Caymen Islands or in Panama or Switzerland or someplace like that and you got the money back into this [9] country, I think they could go after that and forfeit it. I believe that's what it is.

As I understand it, I think it has to be the product of a drug transaction to be forfeited. Isn't that your understanding, Mr. Truman?

MR. TRUMAN: That's my understanding.

THE COURT: Yes. I think that's correct. Well, now, Mr. Libretti, there is one other understanding that I've got to make you understand and that is if you plead guilty, I'm going to have to place you under oath, and I will have to question you as to whether or not your guilty plea is a voluntary plea and whether or not there's a factual basis for the plea.

Now, under the Fifth Amendment to the Constitution, you have a right to remain silent, having been accused of crime, and nobody can force you to plead guilty. However, if you choose to stand on your right, I, of course, won't be able to take your plea and then we'll go forward with the trial and I'll call the jury back in and we'll start where we left off.

So I want to be sure, do you understand these rights?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about them?

THE DEFENDANT: No.

[10] THE COURT: Are you ready, then, to plead to this Indictment?

THE DEFENDANT: Okay.

THE COURT: Mr. Truman, is there any reason why you're client should not?

MR. TRUMAN: I know of no such reason.

THE COURT: Very well. Joseph V. Libretti, Jr., Count 6 of the Indictment – of the Superceding [sic] Indictment charges from on or about January 1, 1984, through and including on or about the date of the return of this Superceding [sic] Indictment, in the District of Wyoming and elsewhere, Joseph V. Libretti, Jr., the defendant herein, did knowingly, intentionally and unlawfully engage in a continuing criminal enterprise in that Libretti did knowingly, intentionally and unlawfully commit the following enumerated violations of 21 United States Code Section 841(a)(1), Section 843(b) and Section 846, which violations were part of a continuing series of violations of said sections undertaken by Libretti in concert with at least five other persons with respect to whom Libretti occupied a position as organizer, supervisor and manager, and from which continuing series of violations Libretti derived substantial income and resources:

Subparagraph 1. From on or about January of 1984, through and including the date of the return of this [11] Superceding [sic] Indictment, in the District of Wyoming and elsewhere, Libretti combined, conspired, confederated and agreed together with diverse other persons, including John J. Biggs, Brian Salvatore Urso, Daniel Dixon, Richard David Schlosser, George Richard Sabell, and others known and unknown to the grand jury, to commit felony violations of the federal Controlled Substances Act as alleged in Count 1 of the Superceding [sic] Indictment, the allegations of which are hereby incorporated herein by reference, in violation of 21 United States Code Section 846.

846 is the conspiracy statute.

Two. Between on or about January of 1984 and on or about August of 1985, in Colorado, Libretti knowingly, intentionally and unlawfully distributed drugs on a monthly basis approximately three ounces of cocaine per month to Craig David Juliano, in violation of 21 US Code Section 841(a)(1).

Three. Between 1986 and January 1990, in Colorado, during and in furtherance of the illegal drug conspiracy charged in Count 1 of this Superceding [sic] Indictment, and during the time when Libretti, Urso and Dixon were members of said conspiracy, Dixon unlawfully distributed approximately ten kilograms of cocaine to Michael Carson, in violation of 21 US Code Section 841(a)(1).

[12] Four. From on or about January 1987, through on or about August 1987, in Colorado, Libretti distributed

cocaine, mostly in one-eighth ounce quantities, to Raymond Rivera on approximately 15 separate occasions, in violation of 21 US Code Section 841(a)(1).

Five. On or about July 1987, in Colorado, Libretti unlawfully possessed with intent to distribute approximately one pound of cocaine, in violation of 21 US Code Section 841(a)(1).

Six. On or about July 1987, in Colorado, Libretti unlawfully distributed approximately one- eighth ounce of cocaine to Raymond Rivera and Kent Palmerton, in violation of 21 United States Code Section 841(a)(1).

Seven. On or about September 1987, Libretti possessed with intent to distribute approximately one pound of cocaine and approximately 600 pounds of marijuana in a storage locker in Wheatridge, Colorado, in violation of 21 US Code Section 841(a)(1).

Eight. On or about early November 1989, in Colorado and elsewhere, Libretti possessed with intent to distribute approximately two kilograms of cocaine which he had received from Biggs, Urso and Sabell, in violation of 21 US Code Section 841(a)(1).

Nine. On or about the latter part of November 1989, in Colorado and elsewhere, Libretti possessed with [13] intent to distribute approximately two kilograms of cocaine which he had received from Biggs Urso and Sabell, in violation of 21 US Code Section 841(a)(1).

Ten. On or about early December 1989, in Colorado and elsewhere, Libretti possessed with intent to distribute approximately two kilograms of cocaine which he had

received from Biggs, Urso and Sabell, in violation of 21 US Code Section 841(a)(1).

11. On or about the latter part of December 1989, in Colorado and elsewhere, Libretti possessed with intent to distribute approximately two kilograms of cocaine which he had received from Biggs, Urso and Sabell, in violation of 21 US Code Section 841(a)(1).

12. On or about June 3, 1989, Libretti, for the purposes of facilitating the illegal drug conspiracy charged in Count 1 of this Superceding Indictment, unlawfully caused the use of a communication facility, in that Libretti caused the person in Chicago, Illinois, to mail to him via United States Postal Service a bank check in the amount of $10,000, which amount represented the proceeds from previous illegal sales of controlled substances, in violation of 21 US Code Section 843(b) and 18 US Code Section 2.

That's the aiding and abetting statute.

13. On or about July 5, 1989, Libretti, for the [14] purpose of facilitating the illegal drug conspiracy charged in Count 1 of this Superceding [sic] Indictment, unlawfully caused the use of a communication facility, in that Libretti caused a person in Chicago, Illinois to mail to him via United States Postal Service a personal check in the amount of $11,000, which amount represented the proceeds from previous illegal sales of controlled substances, in violation of 21 US Code Section 843(b) and 18 US Code Section 2.

14. On or about early January of 1990, in Colorado and elsewhere, Libretti possessed with intent to distribute approximately two kilograms of cocaine which he had received from Biggs, Urso and Sabell, in violation of 21 US Code Section 841(a)(1).

15. On or about the latter part of January 1990, in Colorado and elsewhere, Libretti possessed with intent to distribute approximately two kilograms of cocaine which he had received from Biggs, Urso and Sabell, in violation of 21 US Code Section 841(a)(1).

MS. WOODHOUSE: 26, Your Honor.

THE COURT: This is a great argument for shorter indictments.

16. On or about September 1990, in Colorado and elsewhere, Libretti possessed with intent to distribute approximately two kilograms of cocaine which he had [15] received from Urso, Sabell and Niel Rubano, in violation of 21 US Code Section 841(a)(1).

17. On or about September 24, 1990, in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating the illegal drug conspiracy charged in Count 1 of this Superceding [sic] Indictment, unlawfully used a communication facility in that Libretti utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the King Soopers grocery store pay telephone in Wheatridge, in violation of 21 US Code 843(b).

18. On or about September 24, 1990, at approximately 12:14 p.m., in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating the illegal

drug conspiracy charged in Count 1 of this Superceding [sic] Indictment, unlawfully used a communication facility in that Libretti utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the China Garden restaurant pay telephone in Lakewood, Colorado, in violation of 21 US Code 843(b).

19. On or about September 24, 1990, at approximately 5:05 p.m., in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating an illegal drug conspiracy charged in Count 1 of this Superceding [sic] Indictment, unlawfully used a communication [16] facility in that Libretti utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the China Garden restaurant pay telephone in Lakewood, Colorado.

20. On or about November 29, 1990, in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating the illegal drug conspiracy charged in Count 1 of this Superceding [sic] Indictment, unlawfully used a communication facility in that Libretti utilized the telephone to communicate details of an illegal drug conspiracy by calling Urso at China Garden restaurant pay telephone in Lakewood, Colorado.

21. On or about November 30, 1990, in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating the illegal drug conspiracy charged in Count 1 of the Superceding [sic] Indictment, unlawfully used a communication facility in that Libretti utilized a telephone to communicate details of the illegal drug conspiracy by calling Urso at the China Garden restaurant pay telephone in Lakewood, Colorado.

22. On or about March 8, 1990, at 11:00 p.m., in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating an illegal drug conspiracy charge in Count 1, unlawfully used a communication facility in that Libretti used a telephone to communicate details of [17] the illegal drug conspiracy by calling an unidentified co-conspirator at the King Soopers grocery store pay telephone in Wheatridge, Colorado.

23. On or about March 8, 1990, at 11:00 p.m., in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating the illegal drug conspiracy charged in Count 1, unlawfully used a communication facility, a telephone, to communicate details of the illegal drug conspiracy by calling an unidentified co-conspirator at the King Soopers grocery store pay telephone in Wheatridge, Colorado.

24. On or about August 21, 1990, in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating the illegal drug conspiracy identified in Count 1 of the Superceding [sic] Indictment, unlawfully used a communication facility to send a letter to Urso by way of the United States Postal Service, which letter detailed how Urso should deny and disclaim to investigating law enforcement authorities their (Libretti and Urso's) personal association and their illegal agreement with respect to the conspiracy charged in Count 1 of this Indictment.

25. On or about September 4, 1991, in the District of Wyoming and elsewhere, Libretti, for the purpose of facilitating the illegal drug conspiracy charged [18] in Count 1 of this Superceding [sic] Indictment, unlawfully used a communication facility to send a letter to Urso by way of Federal Express overnight package service. Said

letter was sent by Libretti to Urso under the pretense that the letter was from an attorney in Cheyenne, Wyoming and included information on how Urso could testify at the grand jury investigating Libretti and Urso, their personal partnership and their illegal agreement with respect to the illegal drug conspiracy charged in Count 1 of the Superceding [sic] Indictment.

And 26. From on or about January 9, 1991, through and including March 31, 1992, Libretti possessed with intent to distribute approximately two kilograms of cocaine, most of which Libretti ultimately buried near property he owned near Thayne, Wyoming, in violation of 21 US Code Section 841(a)(1).

All of which is alleged to be in violation of 21 US Code Section 848, which is the continuing criminal enterprise statute.

And then under the topic Forfeiture, it alleges that upon conviction of the defendant for engaging in a continuing criminal enterprise, the United States is entitled to forfeiture of all property of any kind constituting or derived from proceeds Libretti obtained directly and indirectly by engaging in said continuing [19] criminal enterprise; all property of any kind which was used or intended for use in any manner or part to commit or to facilitate the commission of this criminal – continuing criminal enterprise, including but not limited to the following, and then there is listed real property, your lot in Star Valley, conveyances of two vehicles, cash proceeds over a hundred thousand dollars and then another $12,000 and a five – 5,100 and 7,600 amount in currency and jewelry and property consisting of a mobile home

and a computer system, bank accounts that are listed in the Indictment, investments that are listed in the Indictment, the additional cashier's checks and the contents of safe deposit boxes, and that's it.

Now, Mr. Libretti, it's a long Indictment. Do you understand it?

THE DEFENDANT: I understand it.

THE COURT: Have you had an opportunity to fully discuss it with your attorneys?

THE DEFENDANT: Yes.

THE COURT: And you have presented to me a plea agreement. Why don't you come forward, Mr. Libretti, and I'll ask you, is this your signature?

THE DEFENDANT: Yes.

THE COURT: And did you read this plea agreement?

THE DEFENDANT: Yes.

[20] THE COURT: And did you fully understand it?

THE DEFENDANT: I do now.

THE COURT: Do you have any questions about it?

THE DEFENDANT: No.

THE COURT: All right. At this time, then, are you ready to plead to Count 6?

THE DEFENDANT: Yes.

THE COURT: To this charge, how do you plead?

(Pause.)

THE DEFENDANT: Guilty.

THE COURT: The clerk will place the defendant under oath.

(Defendant sworn.)

THE COURT: Mr. Libretti, have all of the answers that you've given me up until now been truthful answers?

THE DEFENDANT: What answers?

THE COURT: All of your answers from – that you've given to me this morning.

THE DEFENDANT: Yes.

THE COURT: Are they all truthful?

THE DEFENDANT: Yes.

THE COURT: Are any of them false?

THE DEFENDANT: No.

THE COURT: It is true, then, that you understand this count of the Superceding [sic] Indictment.

[21] THE DEFENDANT: Yes.

THE COURT: And it is also true that you've had a chance to discuss it fully with your attorneys.

THE DEFENDANT: Yes.

THE COURT: And you understand the consequences of your plea.

THE DEFENDANT: Yes.

THE COURT: What are they?

THE DEFENDANT: 20 years.

THE COURT: Minimum.

THE DEFENDANT: Okay.

THE COURT: Yeah. That must be emphasized. You understand that the 20 years is the very minimum that could be imposed on you, and you could get up to life. You understand that?

THE DEFENDANT: I understand that's the law, yes.

THE COURT: Very well. And in addition to that, you could be fined. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that all of your property could be forfeited, the property that is owned by you by reason of any drug transaction?

THE DEFENDANT: Yes.

THE COURT: All right. Now, I want to ask you this: Is your plea of guilty a voluntary plea?

[22] THE DEFENDANT: Yes

THE COURT: Is anybody forcing you to plead guilty?

THE DEFENDANT: No.

THE COURT: Are circumstances of any type forcing your guilty plea?

THE DEFENDANT: Certainly.

THE COURT: What?

THE DEFENDANT: Yes.

THE COURT: All right. What circumstances?

THE DEFENDANT: Well, just the testimony that we heard last week from some of these people.

THE COURT: What about that testimony?

THE DEFENDANT: Well, my attorney has recommended that I take this course of action because we can't prove that some of these witnesses are lying.

THE COURT: In other words, you're saying that the testimony that you heard in this courtroom last week was so overwhelming that you feel you have no defense to it. Is that correct?

THE DEFENDANT: Correct. Yes.

THE COURT: Is that what I hear?

All right. I rephrased it slightly for you. Now, there is something else. I understand that your mother and father, as well as your brother, are here [23] today and would be the next witnesses called by the United States under subpoena, and they would be obliged to testify. I understand that this is for the purpose principally of proving a negative, mainly that this property that's listed here isn't – wasn't acquired from them by way of gift. Are you pleading guilty to spare them?

THE DEFENDANT: In part, yes.

THE COURT: What's the other part?

THE DEFENDANT: That the testimony we heard last week was overwhelming.

THE COURT: Are you pleading guilty because you are guilty?

THE DEFENDANT: You're asking me if I meet these five requirements, including being an organizer and a manager and those things?

THE COURT: That's in part, yes. The question I'm asking you, are you pleading guilty because you are, in fact, guilty? That's a question that only you can answer. Don't bother looking at your attorney.

THE DEFENDANT: I am guilty of some of the things in here.

THE COURT: Which of the things are you not guilty of?

THE DEFENDANT: That you read off?

[24] THE COURT: Uh-hum.

THE DEFENDANT: Like getting cocaine from Mr. Biggs in November and December and January.

THE COURT: In other words, some of the specific transactions you dispute.

THE DEFENDANT: Yes.

THE COURT: But there are others of the transactions that you don't dispute.

THE DEFENDANT: Correct.

THE COURT: All right. Now, let me ask you this: This count alleges that between January 1, 1984 and the date of the return of the Indictment, and the Indictment was filed on May 22, 1992. Now, the issue is between those two dates, did you knowingly, intentionally and unlawfully engage in a continuing criminal enterprise?

THE DEFENDANT: Well, I guess I don't understand the part about managing, organizing or supervising.

THE COURT: Well, an organizer or supervisor under that section of the Code is –

MR. TRUMAN: Your Honor, may I come to the bench?

THE COURT: Sure.

MR. TRUMAN: I'm handing up the jury instruction that has –

THE COURT: Yeah, that's helpful. Yeah. Mr. Truman has handed me a Devitt & Blackmar instruction which [25] reads: The term "organizer" and the terms "supervisory position" and "position of management" are to be given their usual and ordinary meaning. These words imply the exercise of power or authority by a person who occupies some position of management or supervision. This person need not be the sole or only organizer, supervisor or manager of the activities or persons in question.

That says exactly what I was going to look into the statute and find for you. But that explains it. In other words, you don't have to be the only organizer or supervisor, but you have to have been in a position of management or supervision exercising some power or authority.

Now, were you or were you not?

THE DEFENDANT: A very, very loose reading of that might indicate, yes.

THE COURT: All right. In connection with this conspiracy, were there a continuing series of violations of the drug laws of our country by you and others associated with you?

THE DEFENDANT: You mean three or more?

THE COURT: Yes.

THE DEFENDANT: Yes.

THE COURT: What?

THE DEFENDANT: There were more than three [26] violations.

THE COURT: There were more than three violations?

THE DEFENDANT: Yes.

THE COURT: Was it a continuing series of violations –

THE DEFENDANT: Yes.

THE COURT: – between these dates?

THE DEFENDANT: Yes.

THE COURT: And in that connection, were there at least five other persons with respect to whom you occupied a position of supervision?

THE DEFENDANT: Yes.

THE COURT: Who were they?

THE DEFENDANT: Well, I know the government says that I supervised Schlosser and Dixon because I sold to them, and then they say that I supervised Urso because I bought from him and that I supervised Sabell because he sold to Urso, and I don't know where Biggs fits in that because I don't know if they say I sold to him or I bought from him.

THE COURT: Were there other persons to whom you sold drugs –

THE DEFENDANT: Yes.

THE COURT: – besides them?

[27] THE DEFENDANT: Yes.

THE COURT: On a regular basis?

THE DEFENDANT: Yes.

THE COURT: For instance, I think we heard a couple of women testify last week that they bought or procured drugs from you. Is that correct?

THE DEFENDANT: Yes.

THE COURT: And were there other people as well?

THE DEFENDANT: Well, you heard from Mr. Chinso's testimony. I did sell him some marijuana.

THE COURT: Yeah, I heard his testimony, but what I want to hear now is your testimony.

THE DEFENDANT: Yeah, I sold marijuana to Mr. Chinso.

THE COURT: You did.

THE DEFENDANT: Uh-hum.

THE COURT: Did you have supplies of cocaine and marijuana on hand that you kept in the safe at Lakewood?

THE DEFENDANT: I didn't keep any cocaine or marijuana in that safe.

THE COURT: I see. What did you keep in the safe?

THE DEFENDANT: Guns and some money.

THE COURT: Guns and money.

THE DEFENDANT: Uh-hum.

[28] THE COURT: Where did you keep the cocaine and marijuana?

THE DEFENDANT: Well, I haven't had any marijuana since like 1988 that I was selling, but back then when I had it, I had it in a storage locker.

THE COURT: I see. There was some testimony about a storage locker in Lakewood.

THE DEFENDANT: It was in Wheatridge.

THE COURT: I see.

THE DEFENDANT: There was marijuana and cocaine in there. There wasn't a quarter million dollars in cash, but there was some money in there.

THE COURT: There was some money, but not that much.

THE DEFENDANT: No.

THE COURT: I see. Well, let's – have you got a copy of the Indictment in front of you.

THE DEFENDANT: Yes. Yes.

THE COURT: Starting here on page 22, paragraph 1 of Count 7 – 6, rather, it says that you conspired with these people, including Biggs, Urso, Dixon, Schlosser and Sabell to commit violations of the Controlled Substances Act as alleged in Count 1. Did you do that?

THE DEFENDANT: Yes.

THE COURT: And this was a conspiracy to buy and [29] to sell cocaine and marijuana; is that right?

THE DEFENDANT: Yes.

THE COURT: All right. Paragraph 2 says that between 1984 and 1985, you distributed on a monthly basis three ounces of cocaine per month to Craig David Juliano. Did you do that?

THE DEFENDANT: Not three ounces a month. Probably one or two.

THE COURT: How much?

THE DEFENDANT: One or two for about a year.

THE COURT: Two ounces.

THE DEFENDANT: One or two.

THE COURT: One or two.

THE DEFENDANT: Yes.

THE COURT: I see. Did the amount vary each month?

THE DEFENDANT: No. It was probably one ounce a month for six months and then two ounces a month for six months.

THE COURT: I see. It was an increasing thing.

THE DEFENDANT: Yes.

THE COURT: All right. Paragraph 3 charges that between 1986 and 1990, Dixon unlawfully distributed ten kilograms of cocaine to Michael Carson. Did that happen?

THE DEFENDANT: I don't know if it did or not. I [30] know how much I sold to Dixon, and it's probably closer to ten ounces than ten kilograms.

THE COURT: But you did sell cocaine to Dixon knowing that he in turn was reselling it –

THE DEFENDANT: Yes.

THE COURT: – to Carson.

THE DEFENDANT: No. I've never seen Mike Carson before in my life. I never heard his name until all this started.

THE COURT: You knew that Dixon was selling.

THE DEFENDANT: Yes.

THE COURT: All right. Paragraph 4 charges that between January 1987 and August 1987, you distributed cocaine in one-eighth ounce quantities to Raymond Rivera on at least 15 separate occasions. Is that true?

THE DEFENDANT: I think six separate occasions would be a more accurate.

THE COURT: You did it at least six times.

THE DEFENDANT: At the most, six times.

THE COURT: All right. Paragraph 5 charges that in July 1987, you possessed a pound of cocaine.

THE DEFENDANT: I know I didn't possess a pound of cocaine. I did possess some cocaine then.

THE COURT: How much.

THE DEFENDANT: Well, Mr. Rivera and Palmerton [31] testified it was about three ounces. I think it was closer to six or eight. I told Palmerton it was eight to 16, because I know that when I got it, it was 16, but I had had it for several months at that point. I probably sold half of it.

THE COURT: Paragraph 6 says that in July '87, you distributed an eighth ounce of cocaine to Rivera and Palmerton. True or not?

THE DEFENDANT: True.

THE COURT: 7 says that in September 12, 1987, you possessed one pound of cocaine with intent to distribute it and 600 pounds of marijuana in a storage locker at Wheatridge.

THE DEFENDANT: I've never even seen 600 pounds of marijuana. I didn't possess it.

THE COURT: How much marijuana did you have?

THE DEFENDANT: Between 12 and 14 pounds.

THE COURT: And how much cocaine did you have?

THE DEFENDANT: The five to eight ounces from July that was from number 5.

THE COURT: Paragraph 8 charges in November 1989, you possessed with intent to distribute two kilograms of cocaine which you had received from Biggs, Urso and Sabell.

THE DEFENDANT: See, I know Mr. Biggs was in [32] Florida then because I bought him a plane ticket at his request because I got these student deals. So I know I didn't get two kilograms of cocaine from Mr. Biggs in November of '89.

THE COURT: How much did you get?

THE DEFENDANT: I didn't get any from Mr. Biggs.

THE COURT: How much did you get from Urso and Sabell?

THE DEFENDANT: I honestly can't say I got any then because I know where I was in November of '89, and I don't think I got any from them the whole month.

THE COURT: So that's – paragraph 8 is one of the ones you've had trouble with.

THE DEFENDANT: And 9, the same month.

THE COURT: Nine is the same amount, and that's November '89. You have a problem with that.

THE DEFENDANT: Yeah.

THE COURT: All right. How about 10?

THE DEFENDANT: Ten and 11, again, I know when I got it from them.

THE COURT: That charges you each one with two kilograms.

THE DEFENDANT: See, that didn't happen. I know that the purchase was the day before Dixon was busted, or maybe two days before, and that was in February.

[33] THE COURT: I see. So what your principal problem here is that you are disputing the quantities.

THE DEFENDANT: And some of the things that happened. I am willing to accept responsibility for what I did, but I think the record should be clear.

THE COURT: All right. Well, we must go through the rest of it, then. Let's talk about 11. That charges you with two kilograms. You say it's untrue.

THE DEFENDANT: Right.

MR. TRUMAN: Excuse me, Your Honor. I think what Mr. Libretti mentioned in terms of 11 is that it was true that he did receive those drugs, but that it wasn't in December of '89. Rather, it was in February of '90.

THE DEFENDANT: Right, but it wasn't from Biggs.

THE COURT: Oh, is that it?

THE DEFENDANT: Yes, but it wasn't from Biggs.

THE COURT: Was it from Urso or Sabell?

THE DEFENDANT: Yes.

THE COURT: This says Urso, Biggs and Sabell.

THE DEFENDANT: It used the conjunctive and I wanted to make it clear.

THE COURT: Let's take paragraph 12. That charges you with having caused a person in Chicago to mail you a check for $10,000.

THE DEFENDANT: Well, I don't dispute the check, [34] but I was in Chicago on June 3rd, so I hardly think I would have asked my brother to mail it to me since that was the day my other brother got married. I know I was there.

THE COURT: Did you get your brother to get the check?

THE DEFENDANT: Sure. I'm sure I did.

THE COURT: Yeah. So you just dispute the use of the communication facility.

THE DEFENDANT: Yeah. I don't know why I would have told him to mail it to me when I was there. That doesn't make sense.

THE COURT: And paragraph 13 says that you caused a person in Chicago to mail you a check for 11,000. That's your other brother.

THE DEFENDANT: Yes.

THE COURT: William.

THE DEFENDANT: Yes.

THE COURT: And did he do that?

THE DEFENDANT: Yes.

THE COURT: And did you cause him to do that?

THE DEFENDANT: Yes.

THE COURT: That one is true.

THE DEFENDANT: Yes.

THE COURT: Okay. Next 14, it alleges that in January 1990, you possessed two kilograms. Is that true or [35] false?

THE DEFENDANT: No, it was in February that I –

THE COURT: It was in February.

THE DEFENDANT: Yeah.

THE COURT: All right. And now, this alleges that – in 15, that's another two kilograms.

THE DEFENDANT: There was one transaction in February shortly before Dixon was arrested.

THE COURT: All right. And how much was in that transaction?

THE DEFENDANT: Two.

THE COURT: Two kilograms.

THE DEFENDANT: Yes.

THE COURT: Okay. Then in 16, it alleges that in September 1990, you possessed two kilograms.

THE DEFENDANT: I know Mr. Urso said that, but I never got them.

THE COURT: Well, it may be that we'll have to have a hearing on the quantities of cocaine that are involved in this because as you know, the quantity makes a difference in the amount of the sentence. But going ahead, 17 charges that you used a telephone by calling Urso at King Soopers' pay telephone in Wheatridge on September 24, 1990. Did you do that?

THE DEFENDANT: Yes.

[36] THE COURT: And was it to facilitate a drug conspiracy?

THE DEFENDANT: I think that's why he wanted me to call him, yes.

THE COURT: All right. And 18 charges that you called Urso on September 24, 1990 at the China Garden restaurant pay telephone. Is that true?

THE DEFENDANT: Yes.

THE COURT: And 19 charges that on September 24, 1990 at 5:05 p.m., you called Urso at the China Garden restaurant. Did you do so?

THE DEFENDANT: Yes.

THE COURT: And 20 alleges that on November 29, 1990, you called Urso at the same place.

THE DEFENDANT: Yes, I called him.

THE COURT: Very well. November 13, 1990 charges that you utilized a telephone by calling Urso at the China Garden restaurant in Lakewood. Is that so?

THE DEFENDANT: Yes.

THE COURT: And 22 charges on March 8, 1990 at 9:11 p.m., you called an unidentified co-conspirator at the King Soopers grocery pay telephone in Wheatridge. Did you do so?

THE DEFENDANT: No, and I think that is supposed to be March 8, '91 from what I've read in the grand jury [37] stuff. I could be wrong, but that's what they said in the grand jury.

THE COURT: So you deny 20.

THE DEFENDANT: I'm denying the date. I think that's a typo.

THE COURT: I see. You think it may be '91. You're not denying that you may have called somebody at the King Soopers pay telephone.

THE DEFENDANT: I may have called someone. I can't imagine who I would have called, and it wouldn't have been about drugs then.

THE COURT: Is that kind of the way you operated in connection with this drug conspiracy?

THE DEFENDANT: I made a few calls to those pay phones, yes.

THE COURT: Now, 23 charges that on March 8, 1990, you called co-conspirator at King Soopers' pay telephone in Wheatridge. Is that the same problem?

THE DEFENDANT: Again, either the date is wrong or I don't know who I would have called then.

THE COURT: All right. 24 charges that you used the Postal Service to send a letter to Urso telling him to deny this claim to the law enforcement authorities your association together. Did you do that?

THE DEFENDANT: Yes.

[38] THE COURT: And 24 is true.

THE DEFENDANT: Yes.

THE COURT: Is 25 true, which says that you Fed Ex'd a letter to Urso about instructions pretending it was from an attorney in Cheyenne?

THE DEFENDANT: I did send him a letter, and I put an attorney's name on it, but I wasn't telling him how to testify. All I did was told him what a penalty was for contempt because he asked me to send him that letter.

THE COURT: Finally, 26 says that on January 9, 1991, you possessed with intent to distribute two kilograms. Did you do so?

THE DEFENDANT: Yes.

THE COURT: And did you bury it on property that you owned near Thayne, Wyoming?

THE DEFENDANT: Yes.

THE COURT: And it was that much.

THE DEFENDANT: How much?

THE COURT: Two kilograms.

THE DEFENDANT: No.

THE COURT: How much was it?

THE DEFENDANT: I've been told it was 1.6.

THE COURT: I see. So you think it is closer to 1.6 than 2.

THE DEFENDANT: Yes.

[39] THE COURT: All right. Tell me, Mr. Libretti, how much cocaine do think was involved as a total in this conspiracy?

THE DEFENDANT: Well, I've been thinking about this, and I probably did buy three or four from Scott Raymond, kilograms over time, you know.

THE COURT: You think a total of three or four kilograms over this ten-year period.

THE DEFENDANT: No, no, no, from one person, from Scott Raymond. This was back in '84.

THE COURT: I see. All right.

THE DEFENDANT: And –

THE COURT: How much did you buy from Urso?

THE DEFENDANT: That's what I'm figuring. And I believe we had five at the most, six transactions. The first one was for one. So the other four or five would have been for two. That would include anything having to do with Sabell also.

THE COURT: Well, I was just going to ask you –

THE DEFENDANT: That is Urso and Sabell combined.

THE COURT: Urso and Sabell were together?

THE DEFENDANT: First one was one and the last –

THE COURT: What about Biggs?

THE DEFENDANT: You know, I probably did buy some from him, but it wasn't on any kind of regular basis or [40] anything. I didn't like his stuff, so if I give you the benefit of the doubt, I'll say the whole time I knew him, I bought one and a half to two.

THE COURT: All right. Let me ask you this, Mr. Libretti, you heard all of the testimony that I heard here last week. Was that testimony true?

THE DEFENDANT: It was not all true, but some of it was.

THE COURT: Which was not true?

THE DEFENDANT: Oh, Mr. Carson saying he was buying quarter pounds of cocaine and quarter pounds of marijuana and things like that. That wasn't true. What was that one guy's – Mr. Carson saying I repossessed his (illegible) and I threatened him and his family. That never happened. He said I took Dixon's car title. That never happened.

THE COURT: Was it substantially true except for these details that you point out?

THE DEFENDANT: Well, the only part that is true is I did sell some drugs to Mr. Dixon.

THE COURT: Over this period of time that we're talking about, January 1, 1984 to 1992, approximately an eight-year period there, you were involved in a drug conspiracy, were you not?

THE DEFENDANT: Yes.

[41] THE COURT: And you sold cocaine and marijuana; is that true?

THE DEFENDANT: Yes.

THE COURT: And there is – you were more or less a leader or supervisor, were you not?

THE DEFENDANT: I don't think so, but I can see how you could say that.

THE COURT: Well, you did occupy some position of management, did you not?

THE DEFENDANT: I had people that I supplied.

THE COURT: You got the cocaine and you supplied it to people and you got money in return for it.

THE DEFENDANT: That's correct.

THE COURT: And did that to some extent with the marijuana.

THE DEFENDANT: Yes.

THE COURT: All right. Now, it goes back to the question that I asked you before that you hesitated to answer. Are you pleading guilty because you are?

THE DEFENDANT: Yes.

THE COURT: I think that's obvious, isn't it?

THE DEFENDANT: I just, you know, I question the organizer, manager, supervisor. I never told anyone what to do.

THE COURT: All right. Now, let me ask you this: [42] You've read this plea agreement. Are there any terms in this plea agreement that weren't typed and put in it that you are relying on here today? Is this the entire agreement is my question?

THE DEFENDANT: Yes.

THE COURT: It is the entire agreement.

THE DEFENDANT: Yes.

THE COURT: All right. And there is one other question that I haven't asked you yet and I should have, are you impaired in any way at this time?

THE DEFENDANT: No.

THE COURT: Have you in the last 24 hours been under the influence of any medication, drugs, narcotics, intoxicants or anything that would affect your mind and memory?

THE DEFENDANT: No.

THE COURT: Your mind is now clear at this time; is that correct?

THE DEFENDANT: Yes.

THE COURT: And are you fully satisfied with the services of Mr. Truman and Mrs. Miller?

THE DEFENDANT: Yes.

THE COURT: I'm glad to hear you say that because I think here particularly very able. And after all this discussion, is your guilty plea a voluntary plea?

[43] THE DEFENDANT: Yes.

THE COURT: All right. The Court finds that the plea of guilty is a voluntary plea and the Court further finds that there is a factual basis for the guilty plea, and it may now be entered and the plea agreement may be approved.

And it will now be necessary, Mr. Libretti, for you to be interviewed by the probation officers; either Mr. Bonham or one of his assistants, and then at the appropriate time, you'll be brought back for the purposes of sentencing. Until then you're remanded to the custody of the marshal.

Sit down, through for the time being and we'll bring the jury in.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

PROSECUTOR'S STATEMENT

(Filed Nov. 13, 1992)

COMES NOW, the United States of America, by and through Gay Woodhouse, Assistant United States Attorney for the District of Wyoming, and for its prosecutor's statement briefly summarizes evidence as it relates to Joseph V. Libretti Jr. as follows:

1. In 1981, Joseph V. Libretti Jr. (Libretti) moved from Mt. Prospect, Illinois, to Denver, Colorado, to attend Denver University with a major in hotel/restaurant management. In 1982 Libretti began his drug distribution network in the Denver, Colorado, metropolitan area first distributing primarily marijuana and shortly afterwards, cocaine.

2. This drug distribution network continued until January, 1992, in the District of Wyoming, in Colorado, in Florida, and elsewhere.

3. In about 1984 and 1985, Libretti obtained his cocaine from Scott Raymond of Denver, Colorado, who was arrested in about 1985. Raymond testified at the trial that he sold at least 5 kilograms of cocaine to Libretti.

4. During 1985 and continuing through 1986, John Biggs acted as Libretti's supplier for cocaine. Biggs obtained at least ten kilograms of cocaine for Libretti during this time period.

5. During 1984 and 1985, Libretti sold cocaine for redistribution to Craig Juliano in one- to two-ounce quantities on a weekly basis. Juliano was arrested in 1985 for selling cocaine.

6. In about September, 1985, Libretti purchased a home located at 2440 Willow Lane, in Lakewood, Colorado. The home cost approximately, $192,000 and Libretti and his girlfriend at that time, Toni Cambruzzi, paid $104,000 in cash for the home. All but approximately $32,000 of that money came from Libretti and constituted the profits from his drug sales.

7. In about 1986 Daniel Dixon began purchasing one- to two-ounce quantities of cocaine from Libretti on a weekly or twice monthly basis for distribution primarily to Michael Carson. Dixon and Carson were apprehended together in February of 1990 with 4 ounces of cocaine which Dixon had just purchased from Libretti.

8. In June of 1986, Libretti made a deposit in the amount of more than $20,000 cash to his bank account and then purchased a GNMA Mortgage as an investment. This money also represented proceeds from Libretti's drug distribution business.

9. At the end of 1986, Libretti applied for and received a license to be a firearms dealer, a Federal Firearms Licensee (FFL), which enabled him to purchase and possess semi-automatic firearms. Libretti later obtained a tax stamp which allowed him to deal in Title II firearms or fully automatic firearms, silencers, and weapons of that type. Libretti spent at least $243,000 for firearms which were in his arsenal at the time they were seized by law enforcement authorities in 1991. The money spent for

firearms also constituted proceeds from Libretti's drug distribution network.

10. From about 1984 until July of 1987, Libretti sold cocaine in one to two and a half ounce quantities to Dave Corson a/k/a "Frosty" for redistribution to others. One of Corson's customers was Raymond Rivera who later became a direct customer of Libretti.

11. Raymond Rivera (Rivera) observed Libretti entering a Public Storage locker in early September, 1987. Rivera later returned to the storage locker and broke into it. At the time Rivera entered the locker, he saw approximately $150,000 in cash in a briefcase (Rivera took approximately $10,000), approximately 1 pound of cocaine which Rivera stole, and approximately six large garbage bags containing as much as several hundred pounds of marijuana. Libretti was interviewed about the storage locker theft after a search warrant was executed at his residence at 2440 Willow Lane on January 9, 1991, and admitted that it was his money, cocaine, and marijuana that were stolen from the storage locker. Libretti also admitted that he was a drug dealer and that he "thought about killing" Rivera when Libretti learned that Rivera had stolen the money and drugs from the storage locker.

12. In August of 1987, Libretti opened a safe deposit box with his brother, William, in which he left $48,000 in cash. In early 1989, Libretti began to instruct William on what to do with the cash, some of which was returned to Libretti and some of which was to be invested by William. At one time, Libretti also placed approximately $10,000 in an account with his brother, Timothy's name

and social security number on it in order to avoid having the interest show up under Libretti's name.

13. Libretti continued to be actively involved in cocaine and marijuana distribution, using Richard Dave Schlosser (Schlosser) to distribute cocaine for him in the Loveland, Colorado, area. Claude Jay Cismaru was also actively involved in distributing marijuana and small quantities of cocaine for Libretti. John J. Biggs was also involved in providing Libretti with cocaine from Florida and for distributing some of Libretti's cocaine.

14. In June, 1989, Libretti moved to Green River, Wyoming, and began working at General Chemical in a temporary position in the accounting department. In late August, 1989, Libretti was hired full-time by General Chemical. Libretti travelled from Green River to Lakewood on an almost weekly basis in order to continue to manage and supervise his drug distribution network. During the summer of 1989, Libretti acquired a new source of cocaine, George Richard Sabell a/k/a Chinzo (Sabell), who's [sic] function was to provide 1 to 2 kilogram quantities of cocaine to Libretti through Brian S. Urso, an associate in the drug business of Libretti since about 1987. Libretti directed, via the telephone, the actions of Urso in connection with the purchases of cocaine from Sabell. Libretti instructed Urso to use the pay telephones at the China Garden Restaurant and the King Soopers in the area near 2440 Willow Lane. Libretti would contact Urso at the 2440 Willow Lane address and direct Urso go to one of the two pay telephones, designated by a code set up by Libretti of "Mr. King's" for the pay telephone located at the nearby King Soopers, and "Mr. Wong's" for the pay telephone located at the China

Garden Restaurant. Urso would not engage in a cocaine transaction with Sabell until the price and the delivery of the cocaine had been approved by Libretti.

15. In about July of 1989, Urso, who had been an associate of Libretti's, began to purchase cocaine for Libretti from George Richard Sabell a/k/a Chinso (Sabell). On the first occasion, Libretti, through Urso, purchased one kilogram of cocaine from Sabell for a price of approximately $28,000. After the first buy, Sabell would provide two kilogram quantities to Libretti, sometimes dealing directly with Urso and Libretti, and other times, dealing with Urso. Sabell provided two kilogram quantities of cocaine approximately every six weeks between July, 1989, and December, 1990 for a total of approximately 24 kilograms. At the time, Urso was living in Libretti's house at 2440 Willow Lane, Lakewood, Colorado, from about February, 1989, through the end of 1990.

16. Dixon was arrested on drug charges in February, 1990, with Michael Carson, but Dixon was released and not charged. Dixon was released after a preliminary hearing in which the judge found that there was not sufficient evidence of Dixon's involvement in the transaction to bind Dixon over. This lack of evidence was primarily due to the fact that Carson would not implicate Dixon in the drug transaction. In fact, Carson believed that if he did implicate Dixon or Dixon's supplier, Carson would be killed. Dixon had gone into great lengths to tell Carson about his (Dixon's) supplier, "Joe's" arsenal of fully automatic weapons and his expertise at using them.

17. Because Dixon was released, Libretti and Biggs had discussions about killing Dixon because they

believed Dixon had become a government informant and was working against them. By that time, Dixon had actually lived in Libretti's home for a couple of months and had witnessed a Sabell delivery of cocaine in which Libretti, Sabell and Urso were all present; Dixon had also seen substantial sums of cash lying around the house and was aware of who some of Libretti's other distributors were. Libretti agreed to pay $50,000 to Biggs if Biggs would kill Dixon. At one point in the spring of 1990, Dixon saw Biggs at a bar and took a ride with Biggs. Dixon jumped out of the car when Biggs went into a desolate area outside the Denver city limits because Dixon believed that Biggs intended to harm him.

18. Libretti's gun business was used to launder drug proceeds and was primarily a "front" for Libretti. The gun business was a way for Libretti to justify his income since Libretti was not working at times during the conspiracy and, when he was working, was not bringing in the money that would pay for the Lakewood house and other investments.

19. The first of Libretti's recorded gun transactions was an illegal transfer of a firearm to Biggs, using the alias of William Demetro.

20. In approximately February of 1988, Libretti illegally transferred a Taurus, Model 80, .38 caliber revolver to Urso, who had previously been convicted on two occasions for felony drug charges. Libretti transferred the gun to Urso in the name of Terri Lynn Urso who was Urso's wife at the time.

21. Many of Libretti's gun transactions were to people who were involved with him in the drug trade (Biggs,

Schlosser, Sabell, Dixon, Urso and others). Libretti also knew that these people and others were drug users as well and yet in each instance, Libretti allowed them to lie on what is known as an ATF (Alcohol, Tobacco and Firearms) Form 4473 when they were asked to check if they were illegal users of or addicted to narcotic drugs.

22. While Libretti was in Green River, he used two deputies in the Sweetwater County Sheriff's office to lie on letters stating that the Sweetwater County Sheriff's office was interested in purchasing fully automatic weapons, when the Sheriff's Department had no budget for and no to intent to purchase any weapons. Due to the complicity of these two sheriff's deputies, Libretti was able to obtain approximately 37 fully automatic firearms. The sheriff's deputies also signed a number of letters which enable Libretti to obtain many other semi-automatic firearms which appeared to have been transferred to sheriff's deputies, but were merely kept in Libretti's arsenal as were most of the fully automatic firearms. Libretti gave one of the deputies a gun in exchange for his assistance with these letters.

23. During the time that Libretti owned the residence located at 2440 Willow Lane in Lakewood, Colorado, Libretti, Biggs, Urso, and Scott P. Matheu, among others, fired silenced and unsilenced fully automatic weapons off the back porch area of Libretti's home in Lakewood, Colorado. This would often occur during, or shortly after, drug transactions and/or drug usage had occurred at Libretti's Lakewood, Colorado residence.

24. Libretti acquired two large safes in his Lakewood, Colorado, home between 1987 and 1989. Libretti

used these safes to store large sums of cash, fully automatic and semi-automatic firearms, many of which were loaded, and kilogram quantities of cocaine. Libretti, Urso, Biggs, Sabell, Schlosser, and Dixon all witnessed the contents of the safes and conducted some of the drug transactions around these safes when they were open.

25. Libretti stored large sums of cash and cocaine in safe deposit boxes in various banking institutions around the Denver, Colorado, metropolitan area and in Mount Prospect, Illinois. Frequently, Libretti would travel with other members of the conspiracy, Dixon, Schlosser, and Biggs, to these banks to obtain drugs from these safe deposit boxes. Sometimes during trips to the safe deposit boxes, wherein Libretti would pick up cocaine and cash, Libretti would have loaded guns on or about his person and vehicles. In addition, Libretti stored controlled substances, an illegal machine gun and a cashier's check for $65,000 which represented drug proceeds in his personal use locker at General Chemical in Green River.

26. In Libretti's home at 2240 Willow Lane, Lakewood, Colorado, a number of loaded firearms were located throughout the house. All co-conspirators were aware of the existence of these firearms.

27. Libretti used his firearms business to launder money received by him as a result of the distribution and sales of cocaine and marijuana.

28. Libretti also laundered drug proceeds by purchasing several automobiles, real property in the state of Wyoming, and other investments.

29. Libretti directed the manner in which deals would be done with Dixon. Libretti, of course, always set the price and the time the deal would occur. Libretti directed Dixon with regard to Dixon's customers continued purchases and payments for cocaine. At one point, Carson, one of Dixon's customers fell behind in his payments for cocaine which had been fronted to Carson by Dixon. Dixon and Libretti discussed what to do about Carson's debt; Libretti told Dixon to continue to supply Carson with "the product" because Carson could not get out of debt without cocaine to sell to others. Later, when Carson's debt became larger, Libretti told Dixon to take something of Carson's which had some value. Dixon used Libretti's truck to seize and sell Carson's drums and keyboard as collateral for the cocaine debt. Libretti also required that the payment for cocaine be "faced" (stacked with all faces up) and in larger denominations (at least "tens").

30. Libretti also directed the drug distribution efforts of Schlosser. Libretti told Schlosser not to sell drugs from his (Schlosser's) home and not to store drugs at Schlosser's house. Libretti told Schlosser to get a storage locker and a safe deposit box in which to store cocaine and cash, to relocate them periodically, and not to enter them too frequently. Libretti required that Schlosser use pay phones in order to have certain conversations with Schlosser concerning drug deals. Libretti frequently contacted Schlosser to see how his sales were going and whether or not Schlosser was ready to "re-up" (purchase additional quantities of cocaine.) Libretti invented a fictitious machine shop business for Libretti and Schlosser to

be partners in, in order to help Schlosser explain Schlosser's frequent trips to Lakewood and extra income to Schlosser's wife.

31. Libretti directed Biggs' trips from Florida to Colorado to provide Libretti with cocaine. Libretti would instruct when the trips should be made and always dictated the amount of the deliveries (no more than two-kilogram quantities per trip.)

32. Libretti directed the actions of Urso in acquiring cocaine from Sabell for Libretti. Libretti approved the price, quantity, and time of delivery. Once the transaction occurred and Urso obtained the cocaine, Urso placed the cocaine in one of the safes at the Lakewood house and it remained there, untouched, until Libretti arrived from Wyoming to weigh, divide, and distribute the cocaine to Schlosser, Dixon, and others. Libretti provided Urso with the combination to the safe only when Urso needed to gain access to the safe in order to pay Sabell for a cocaine delivery. Sometime in December of 1990, Libretti told Sabell that there would be no more purchases of cocaine until such time as Libretti decided to continue. When Urso became addicted to cocaine and a perceived liability to Libretti, Libretti evicted Urso from his Lakewood home.

33. In nearly all instances, Libretti required money up front for drugs, he required that the money be "faced" and in certain denominations. Libretti directed the manner in which he would be contacted by his dealers, the words which could be used over the phone, the times when the use of pay phones was necessary, and frequently even which pay phones would be used. Libretti's

address book contained the telephone numbers for King Soopers pay phone, the China Garden pay phone and a gas station pay phone used by Schlosser in Loveland. Interestingly enough, Libretti's address book also contained the entire description of Biggs' false, William Demetro identity, including driver's license number and address. Throughout the drug conspiracy and in relation to the co-defendants, Libretti acted as an organizer, supervisor, manager and controller of the drug distribution network. Libretti took an active interest in his drug distributors' business as outlined above.

34. On about August 21, 1991, Libretti sent a letter to Urso who was at that time incarcerated at the Limon Correction Facility in Limon, Colorado. The letter specifically told Urso that when contacted by federal investigators, Urso should say that the only relationship between Urso and Libretti was that of landlord and tenant and although they did talk on a number of occasions over the telephone, the substance of the conversations was always landlord-tenant matters. In other words, telling Urso what lie to use to explain the frequent telephone contacts between Urso and Libretti when questioned by federal agents. Libretti sent a subsequent letter to Urso (verified by handwriting exemplar identification) which was sent via federal express with the return address of Cohen, Cohen and Cohen, 1221 East 12th Street, Cheyenne, Wyoming 81234 phone number 307-634-0112. Inside the federal express mailer was a typed letter to Urso from Joe telling Urso what to do when questioned before the federal grand jury in Wyoming (invoke the fifth amendment).

35. Libretti also hired attorneys or attempted to find attorneys and offered to help pay for attorneys for most of his co-conspirators when they were questioned by the grand jury or federal agents and some when they were arrested on drug charges.

36. On about November 21, 1991, Libretti was subpoenaed by the federal grand jury to produce handwriting samples for comparison with other documents seized during the execution of a number of search warrants on Libretti's residences and storage lockers. Libretti's handwriting on that occasion was found by the handwriting expert at the Wyoming State Crime Lab to be deceptive. Libretti took as long as 45 seconds to sign his name which is one of the indications of deception. His handwriting on this occasion was significantly different from the handwriting seen on numerous checks, contracts which were notarized, legal documents, personal diaries, notes from classes and courses and other documents which were witnessed to be Libretti's handwriting. Libretti's original signature on his motel receipt at La Quinta on the night prior to giving the handwriting samples was again the same (and significantly different from that given by him when he provided the handwriting exemplars) as the handwriting in the possession and handwriting obtained on December 4, 1991, during the execution of a search warrant on Libretti's office at General Chemical.

37. While Libretti was under investigation, he buried one and a half kilograms of cocaine adjacent to his property in the Star Valley area near Thayne, Wyoming. After this cocaine was seized, Libretti wrote a letter (handwriting verified that it was Libretti) to Joe Kalady (an inmate/jailhouse lawyer/friend of Libretti's) stating

that if the government did not find fingerprints on the containers, Libretti would "simply claim" that the dope was buried by Schlosser (who advised the government that Libretti had purchases ammunition cans to effect such a burial.)

38. There are additional sums of money Libretti received from his drug business which have not been mentioned. Libretti had approximately $12,000 in cash hidden in a paint can in the basement of his girlfriend, Claudia Porter's house when he was arrested. Libretti also had a $28,000 cashier's check in August of 1991 and more than $28,000 in cash in his safe deposit box in Mt. Prospect, Illinois. There is evidence that Libretti travelled to Ann Arbor, Michigan and to Portland, Oregon with substantial amounts (perhaps as much as $100,000 on each occasion) of cash, none which has been located by law enforcement authorities to date. After Libretti was arrested, he directed Claudia Porter to transfer approximately $9,500 to Joseph Kalady in order to keep it from federal authorities. Libretti also transferred his property in Star Valley to his father and attempted to transfer some of his investments to his father in order to keep federal authorities from forfeiting or seizing these assets.

DATED this 13th day of November, 1992.

RICHARD A. STACY
United States Attorney

By: /s/ Gay Woodhouse
GAY WOODHOUSE
Assistant United States Attorney
DAVID A KUBICHEK
Assistant United States Attorney

(Certificate Of Service Omitted In Printing)

[TRANSCRIPT OF PROCEEDINGS, SENTENCING]

[3] PROCEEDINGS

(Hearing proceedings commenced

11:15 a.m., December 23, 1992.)

THE COURT: Case of the *United States versus Joseph V. Libretti. Jr.*

Miss Woodhouse?

MS. WOODHOUSE: Good morning, Your Honor, Mr. Truman. We are here this morning in the sentencing of *United States of America versus Joseph V. Libretti, Jr.*, criminal Docket number CR-92-0006 B. Plaintiff Libretti is here with his counsel Craig Truman and Linda Miller for the sentencing.

As the Court remembers, we started trial on this matter September 28th, and Mr. Libretti chose to plead guilty pursuant to a plea agreement on October 5th, and he pled guilty to a violation of being engaged in a continuing criminal enterprise which is prohibited by 21 USC 848.

THE COURT: Thank you, Ms. Woodhouse. The first matter I will take up are the objections on behalf of the defendant to the presentence report.

Mr. Truman, would you care to proceed on that issue?

MR. TRUMAN: Your Honor, we acknowledge the presentence investigation done by Mr. Schoen from [4] Mr. Bonham's office. Your Honor, we agree that the calculation of the sentencing guidelines is correct; that there is a two-level enhancement for obstruction of justice

and a two-level mitigation for acceptance of responsibility. Your Honor, that puts us at a level 38.

Also, Your Honor, we have provided the Court with ample defendant's version. Your Honor, many of those things in the defendant's version are opposed to those versions of events provided by the government.

Your Honor, those are factual difficulties that –

THE COURT: Basically, the things that were said in the defendant's version that is incorporated now in the presentence report are about the same things that he told me at the time of the entry of the plea, if my recollection is correct.

MR. TRUMAN: It is very consistent, Your Honor.

THE COURT: And so it's nothing – no surprise to the Court.

MR. TRUMAN: Your Honor, with that exception, concerning the factual predicate around these – these events –

THE COURT: If – If there is some problem with the defendant's version in the presentence report that would follow him to the place where he's incarcerated, I [5] would, under those circumstances, be willing to order that to be stricken so that he didn't have that albatross hanging around his neck.

MR. TRUMAN: That would be our request.

THE COURT: All right, so ordered. Any other objections?

MR. TRUMAN: Otherwise, Your Honor, there's two typographical errors.

THE COURT: Oh, well, we can ignore the typographical errors –

MR. TRUMAN: They are somewhat significant.

THE COURT: Mr. Libretti, nothing serious about that. Any further objections to the presentence report?

MR. TRUMAN: Your Honor, otherwise, the report of Mr. Libretti's background, education, financial circumstances are accurate.

THE COURT: Fine. Thank you very much, Mr. Truman.

Did you have anything with respect to the presentence report, Miss Woodhouse?

MS. WOODHOUSE: No, Your Honor, the United States does persist in believing that Mr. Libretti should not be receiving two levels off for acceptance of responsibility because of the nature of his statement being so minimizing of his criminal activity.

[6] THE COURT: Well, I think he accepted responsibility but maybe it came a little late in the case. But nonetheless, it was an acceptance.

At the time of the entry of the plea I think he clearly admitted his guilt and under those circumstances, I think he's entitled to the two levels off. However, with regard to the two-level increase for obstruction of justice, there is no doubt in the Court's mind that Mr. Libretti attempted

to alter his handwriting on the exemplars that went to the grand jury and did in fact obstruct justice there. I think I have to regard that as – I think the probation officer was right in treating it that way.

The other thing about it is it doesn't really make a lot of difference in a case like this because there is a 20-year mandatory minimum sentence and this two-level increase for obstruction of justice brings the lower level up to 24 – 240 months. So it doesn't seem to me like it makes much difference. So, so ordered.

MR. TRUMAN: Thank you.

THE COURT: Now, Mr. Libretti, you do appear before me for the purposes of sentencing, and I will first assume, is it not correct, that you've read the presentence report.

MR. LIBRETTI: That's correct.

[7] THE COURT: Are there any further changes that you believe ought to be made?

MR. TRUMAN: May I have a moment, Your Honor?

THE COURT: Surely.

MR. LIBRETTI: Okay. On page 16, second line, where it says I sold him about six or seven ounce quantities. It should be one-eighth. It should be a fraction between ounce and quantities.

THE COURT: Six or seven eightballs.

MR. LIBRETTI: Yeah.

THE COURT: Okay. I will consider that as being the intent of that statement. It's part of your statement of what you did, which I've just ordered stricken anyway, so it wouldn't matter.

MR. LIBRETTI: Well, the only other one was on page 17, paragraph two. Instead of June '91, it should be January.

THE COURT: Oh, very well. I'll consider that as being a correction that has been made.

Your last drug transaction was in January 1991.

MR. LIBRETTI: Yes.

THE COURT: Very well. Now, Mr. Libretti, I'll be glad to hear what you have to say on your own behalf as to why you should not be sentenced or in mitigation of sentence.

[8] MR. LIBRETTI: Well, with that in mind, I'm going to try to avoid going into any legal arguments. That's not my place. I'm just going to read something I've prepared if that's okay.

I have always accepted responsibility for the mistakes I have made and have tried to make the best – I have tried to the best of my ability to make amends and restitution to anyone who has suffered an injury because of my actions. Any damage I have caused I have repaired. My conduct for which I am here today demands no less. I am sorry for the actions which bring me before the Court. I can accept the punishment myself, but it's most difficult knowing the toll on those who love me. I never imagined the effect or devastation my actions would have on my loved ones, especially my family.

The probation department recognizes that my crime is a victimless crime, and I am glad that I have never hurt anyone. However, I feel that there is a social cost associated with drug abuse just as there is with gambling addictions and alcohol and tobacco abuse. As an act of restitution, I would like to provide some service to society in an effort to alleviate some of the costs of drug abuse to the country.

I have no real understanding of drug addiction, [9] I've never been in that situation, and I find it difficult to have a lot of compassion for anyone who admits getting high. His or her highest priority, more important than his or her family and financial obligations. That type of behavior appalls me. And it's probably for this reason I would not make a very good drug counselor. But on – on the many months I've been in jail, I've come to realize that my conduct with controlled substances may have caused or certainly contributed to others' irresponsibility with drugs. And that does trouble – that does trouble me. That was never my intent.

However, as of this moment, over 14,000 children are orphaned due to their parents dying of AIDS. In just a little over seven years, in the year 2000, 82,000 children will be orphaned due to their parents dying of AIDS. Who's going to take care of these children? I have great compassion for these orphaned children. Many of the victims of AIDS contracted AIDS through IV drug use. I would like to take care of these children with no parents.

This is probably the best form of restitution I could make. I am asking you to find that the degree of my conduct, viewed in consideration with the conduct

required to fall within the charge of engaging in a [10] continuing criminal enterprise. The need for parity among the defendants with similar records and similar conduct and the need for the sentence imposed may warrant and be better served with a downward departure.

I did break the law and I'd like to make it right. Being in prison won't necessarily make that happen. The considerations and needs that require sentence be imposed may be better served with the sentence in closer parity to the codefendants' sentences.

I realize some of the needs for the sentence imposed have to do with reflecting a seriousness of the offense. I interpret that to mean my conduct, to promote respect for the law and to provide just punishment. To provide for adequate deterrents to criminal conduct to others and myself, and to protect the public, and I'd like to add that I'm not a threat to the public, and even Claudia Porter says so. And I think if anyone would say something bad about me, she probably would.

So, with that, all I ask is that, you know, the purpose of the sentence be kept in mind and perhaps one question that you could answer and keep in mind is what objective is to be served with my incarceration and can that objective be better served with the sentence in [11] closer parity to my codefendants?

I stand ready for acceptance of sentence and all I can ask is for fairness. But fairness to me means a sentence proportionate with my actions and consistent with the actions and sentences of others in this case. And that's what I have to say.

THE COURT: Thank you, Mr. Libretti. I'm sure Mr. Truman has something he'd like to add.

MR. TRUMAN: Your Honor, I do have things I'd like to add. And sometimes, particularly on days like this I have a difficulty speaking and getting my syntax right.

I always hate to come for sentencings. Sentencing is always the hardest day of my calendar, particularly this day so close to holidays. And a year 1992 which will always be the year of Joe Libretti in my life. Since almost February I've represented Joe in one aspect or another and it has not been easy, but it has been interesting and challenging.

Judge, I want to talk a little bit about the Joe Libretti I know because he is an enigma to me. In almost 20 years of the practice of law, exclusively criminal – and I know the Court can feel this too – you think you've seen everything once. You see the good and the bad in people, sometimes the best and the worst [12] of people. Rarely do you see a person that's impossible to figure out.

Judge, I've tried for a year and I find Joe Libretti hard to – to define. In many respects the Joe Libretti I know, I like. In many respects the Joe Libretti I know I admire. There is a down side of his personality, which I don't understand. You look at a fellow whose family, a man couldn't ask for a better family. All families have problems. And the Libretti family is no different. Perhaps one family is too warm and another family is too cold, but a man couldn't ask for a better family. Come to know all of them over this period of time. The sadness of this case that strikes their heart is what I find technically poignant

and has caused Joe such despair that it's the only thing about this case that he can barely stand.

The prospect of years in custody, the shame of what Joe's actions have done, again, the best and the worst, I see a family that forgives him unconditionally, even more than Joe forgives himself, for his bad actions and his granddad and his mom are here today pulling for him. Joe's found it difficult to communicate with them because he is so ashamed and saddened by the predicament that he's put them in.

An enigma to me also is the love that Joe has [13] for his family, and yet his actions of including his brother and some of the monkey business around this crime. It'll be many days before I forget his brother's testimony in the trial and watching him outside in the hall as he broke down sobbing uncontrollably. It will be many days before I forget Joe Libretti steeling his jaw so that he built the shell of armor around himself while his brother testified. And yet I know him well enough to know that his heart was breaking inside. I don't know how Joe came to get in this business. I wish I did. I wish we could fix it, but we can't.

There are several things I do know and that is that Joe, an over achiever, a fellow while he's one of the more intelligent people I've ever represented, goes beyond that by working hard. And while that was such an attribute as a youngster and such an attribute at school, those virtues became detriments when he got in the drug business.

Joe Libretti has always been able to do well no matter what he's done. If he had fastened his star on legitimate legal business, what a powerhouse he'd be.

I am convinced of one thing and I hope the Court hears this. I'm not trying to take accept – to take responsibility away from Joe Libretti. He's earned the hair shirt that he wears today. But I have never in [14] my practice seen a more unusual cast of characters, unusual in the sense that a gifted group of people, somewhat privileged, with a lot of things given to them and futures as bright as anything have thrown it all away.

The week of trial we spent here just showed such devastation for these people and their families. Over the years I've been an adjunct professor at the University of Denver School of Law. University of Denver School of Law is separate, off campus from the University of Denver. But Judge, I am convinced that something happened in the early '80's at the University of Denver Undergraduate School where people like Joe and some of the other cast of characters you've seen came in that cesspool of drug use.

I like to think I'm not naive, but I was shocked by some of the testimony in the investigation that narcotics – and I mean kilos and kilos of narcotics – were available on campus to everybody.

THE COURT: Well, I had a daughter at the University of Denver School of Law during those particular times when Mr. Libretti was in the undergraduate school who did not report to me the conditions that I learned of at the undergraduate school and I, too, was quite surprised.

[15] MR. TRUMAN: The availability and the sociability of narcotics at that period of time, given Joe's unusual virtue of making money, I mean, it's almost a

vice of avarice. It comes close to that and sometimes becomes a vice, came together like a warm and cold front to lead Joe on into this circumstance.

The Joe Libretti who was avaricious and illegal, breaking the law, is in direct contradiction to the Joe Libretti who takes, of all places, a job in Green River, Wyoming, at General Chemical and who exceeds all expectations, and who works 40 hours, 50 hours, and 70 hours a week.

The Joe Libretti drug dealer is not the same Joe Libretti who volunteers time to the Boy Scouts. I don't understand the difference. It's impossible for me to reconcile those people and I hope that Joe has a chance to understand how he is both people at once.

Of all the drug dealers I've represented over all the years, Joe Libretti is the only person who didn't enjoy a bit of it. Of all the money that he made – and that's a factual dispute – but of all the money he made, he didn't enjoy a bit of it. That's incongruous with the narcotics dealers that I've known in the past. They're high livers. Joe Libretti wasn't even the highest liver in Green River, Wyoming. No [16] vacations, no unusual, crazy purchases. There was something in Joe that made him squirrel these things away. I wish I understood that. I'd like to provide some insight to Joe about that. I've tried, and I can't. I don't understand.

I need to talk briefly now that I talked about Joe about the cast of characters here, and again, this is an unusual case. It's unusual from my standpoint where Mr. Sabell and Mr. Urso are above Mr. Libretti in the chain.

Clearly, Mr. Libretti says that among other people early, but certainly during the last days of the enterprise, he buys narcotics from Sabell and Urso. Sabell and Urso even get together in a cabal, it's my understanding, to set the price on Mr. Libretti. Those people cooperate with the government, the Court has sentenced them, the Court knows what they received. Mr. Libretti, in many conversations with me, says, "How can I be the king pin? They sold me dope. I know they were selling other people dope. I don't understand." The cast of characters –

May it please the Court.

THE COURT: Please proceed.

MR. TRUMAN: The cast of characters also include Brian Urso, whose records lead as long a rap [17] sheet – he cooperates with the government and again Mr. Libretti says, "How can this be?"

The cast of characters also involves Mr. John Biggs. And I need to watch myself or I could go on and on about John Biggs. John Biggs testified in front of the grand jury and later took back some of the more colorful testimony. Many would think that's at least a contradiction, something, perjury. Irrespective of that, Your Honor, he gave information against Joseph Libretti.

Mr. Schlosser and Mr. Dixon, the Court knows about those people as well. Again, it will be many days before I forgive Mr. Dixon as a result of the aneurism. And the Court may recall my asking him a question about a dirt nap and his reaction when he began to laugh almost uncontrollably.

A lot of things have been said here, Your Honor, that aren't true. I wish I knew which were. I wish I knew which Joe told me was true and these other people told the grand jury and the Court that were true. I think that there has to be some coincidence here, but it's hard for me to reconcile with all of the stories that have gone on and on.

I am, in my heart – and I guess this is my opinion – convinced that Joe Libretti never tried to [18] hurt anybody. Throughout the discovery part of this case, we kept hearing about Joe Libretti saying he was going to have Mr. Carson killed or Joe Libretti saying he's going to kill Mr. Rivera. And the Court may recall in the discussion here it was Dixon who testified that he threatened Carson with Libretti using him as a hammer, but that Libretti never – it's my understanding of the testimony, that Mr. Rivera felt threatened but there had never been any threat.

In fact, the Court may remember the unusual circumstance of Rivera armed, going to Mr. Libretti's house to confront him, and walking away without circumstance. Of all the things in this case that we've had disagreement with the government's evidence, Joe Libretti has consistently and adamantly said, "I've never tried to hurt anybody. I would never try to hurt anyone." Your Honor, it's a terribly difficult case.

May I have a moment?

THE COURT: Surely. Now, please proceed.

MR. TRUMAN: Thank you for the moment, Your Honor. Your Honor, also, like no other drug dealer

that I've known, Mr. Libretti continues to work all the time. It seems like most time he was working and enterprising. He made legitimate money. That money came into his bank account, probably was intermingled with other things. [19] It's hard to sort out which was which. But he continued to have gainful employment and was a work-a-day guy. I find that unusual.

Your Honor, of course all that's for naught, because as a result of this, the forfeiture is going to take regular money and illegal money under the substitute assets. All those years that he's worked. Maybe that which he's loved most dearly next to his family, those dollars for whatever reason are going to be taken from him by the government. Mr. Libretti has a lot of questions about that. It's a harsh law. Both the CCE law and the forfeiture law is a harsh law. It's a bitter pill dealt by Congress, but it's a pill we must swallow.

Here, Your Honor, Mr. Libretti believes that in light of his conduct and the sentences of the others, that Mr. Libretti seeks whatever fairness the Court gives in mitigation under the statute.

THE COURT: Thank you, Mr. Truman.

Miss Woodhouse?

MS. WOODHOUSE: Your Honor, I'd just make a short comment. As far as the sentences of the other defendants, I'd like to remind the Court that within weeks after they were charged, they came forward and admitted their responsibility and culpability. They [20] gave us complete debriefings of all the information they

had in this case very early on and continued to cooperate with us throughout the investigation.

Unfortunately, you didn't get to hear all of the testimony of all the defendants and so you don't know that they all corroborated – the stories basically all fit together.

And the fact that Mr. Dixon laughed at the dirt nap shows that he was not coached to say, "Oh, yes, I heard about a dirt nap." These people were testifying honestly from their own point of view and the things that they heard, and I believe that the Court had an opportunity to see that, at least in the instance of Mr. Dixon. Therefore I don't believe there is too much comparison with Mr. Libretti who's continued to deny responsibility up through the first week of trial and even then has taken sort of a half – "I will accept this half of the responsibility." And I believe that he certainly is deserving of the 20-year mandatory minimum sentence.

THE COURT: Thank you, Miss Woodhouse.

MS. WOODHOUSE: Your Honor, we also have a motion for the forfeiture order and we can deal with that at the end.

THE COURT: I think I have no alternative but [21] to grant the forfeiture order and it is hereby granted.

Mr. Libretti, I have considered the presentence report and, of course, also taken into account all the things that you said. I find there's hardly anything in – as to what Mr. Truman has said with which I don't agree. I question, maybe, in some ways the timing of this sentencing just before Christmas, and yet I feel that it's for your own

advantage that you get out of the county jail and get to the institution where you are going to be and to get on with that life.

I have been to most of the institutions west of the Mississippi to see for myself what they are like and I have generally observed that there are people who work in the prison industries like yourself, can be accountants for them and do meaningful work in those places you obviously can't do in the county jail. And I think you ought to get on about it. So that's the justification for this kind of sentencing.

Plus the fact there is also a day that I had some time – yes, Mr. Truman, you're right, there is nothing harder than a sentencing. And throughout the years that I've been on this bench, I have devoutly prayed that I may be a wise and just judge. And yet when I come up against a mandatory minimum guideline sentence, I do indeed agree that they are harsh and it [22] is not equitable. And I am glad that Judge Keene of Denver and I were the only two in this circuit that spoke against these laws at the time the sentencing commission was considering adopting them, just for that reason.

And I think, Mr. Libretti, that if I were to have the discretion that I used to have before Congress took it away from me, I would make the sentence in this case substantially less. Because I had 29, the years that you should be marrying and having a family and raising some grandchildren for your – and great grandchildren for your mother and grandfather who are here today, you're going to be wasting your time in a prison. And I feel sorry for that – for you for that.

And yet there is no motion to go below the guidelines by the government. In the absence of such a motion, I can't do it. So, therefore, I have no discretion in this matter but to impose the sentence that is required by what I feel are harsh laws.

So, for these reasons, it is the sentence and judgment of this Court that you be committed to the custody of the Attorney General of the United States to be confined in an institution to be designated by him for a period of 240 months and that you shall be given credit thereon for the time that you have been in [23] federal custody awaiting sentence; and that upon your release from confinement, that you shall serve a period of five years of supervised release.

That is not so much a penalty for you as it is to give you a probation officer who will help you in the readjustment process that will be needed. You'll find that the probation officer can be your best friend and is there specifically to help you.

During that period of time that you are serving as well as serving unsupervised release, I am going to impose – because of the large quantities of drugs involved in this case, I think some fine is necessary. I recognize the fact that there has been a forfeiture of almost all of the illicit gains that you achieved.

And I really think that the explanation of this, Mr. Truman, is that here's a bright young man who was competitive, and in the interest of being – achieving on the scene, that he saw the easiest place of quick gains and advancement was the drug scene.

And you know, I'll say this. You were good at it. It's too bad. I agree with Mr. Truman, it's a great shame that your energies weren't channeled on Wall Street, because I think you would be a great success.

However, I am – the recommendation is that I fine you $25,000, but I think that is unfair and too [24] high. I'm going to make it $5,000, so that it's something that you can pay during the time that you are earning money in the prison industry business. And when you're on supervised release, the supervised release shall be under condition that you shall not commit any crimes – federal, state or local – and you are prohibited from having firearms, ammunition, or explosives of any kind from here on out.

Again, you cannot possess any controlled substances and shall abide by the standard conditions of supervised release. But in addition, you shall participate in programs of drug testing and treatment for drugs and alcohol as directed by your probation officer, and shall submit to mandatory testing on demand.

And I'm going to impose on you a requirement of 500 hours of community service. That's in lieu of the other amount of the fine that I have dropped. But I think that the 500 hours of community service will help you in your adjustment process. You'll be doing something for others. And I think that's a good thing for you to do and consider. So I'm going to require that in the course of your supervised release.

With that, Mr. Libretti, you are remanded to the custody of the marshal and you will have to go with [25] him. Good luck. Did you have something further?

MR. LIBRETTI: Are we over?

THE COURT: I think so.

MR. LIBRETTI: Well, then, with that in mind, I would just like to object to what I see as a failure to find any factual basis for the whole forfeiture, just for the record.

THE COURT: Your objection is noted, and I think there is a – the evidence that I heard before me in the two days of trial I think is sufficient to warrant the granting of forfeiture. I think I have no alternative. Anything further?

MS. WOODHOUSE: Nothing further, Your Honor.

THE COURT: Court will stand in recess subject to call.

(Hearing proceedings concluded

11:56 a.m., December 23, 1992.)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

ORDER OF FORFEITURE

(Filed Dec. 23, 1992)

WHEREAS, in the Indictment in the above-entitled case, the plaintiff sought forfeiture to the United States of America of specific property of the Defendant, pursuant to 21 U.S.C. § 853:

AND WHEREAS, on October 5, 1992, the Defendant agreed to the forfeiture of any right, title and interest as to him, as to all such property described hereinafter, more specifically described in Count 6 of said Indictment, in Bills of Particulars, and in the United States' motions for Restraining Orders against such property. On that date, the Defendant entered a plea of guilty to the offense listed in Count 6, 21 U.S.C. § 848, and also entered into a plea agreement signed and executed by all the parties in which the Defendant agreed to forfeit all property;

AND WHEREAS, by virtue of said stipulations, agreements, and pleas of guilty, the United States is now entitled to said property, and it should reduce said property to its possession, pursuant to 18 U.S.C. § 848 and 853, and Rule 32(b)(2) of the Federal Rules of Criminal Procedure.

AND WHEREAS, pursuant to 21 U.S.C. § 853(n)(1), the United States is required to publish notice of the order and of its intent to dispose of the property in such

manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have an alleged interest in the property that is the subject of the Order of Forfeiture as a substitute for published notice as to those persons so notified;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That based upon the plea of guilty by the Defendant and the plea agreement entered into by all the parties, the United States is hereby authorized to seize the following property, and all right, title and interest of Joseph V. Libretti, Jr, in and to said property is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of 21 U.S.C. § 853(n)(1):

(A) All of that lot or parcel of land, together with its buildings, improvements, fixtures, attachments and easements, located in Township 35 North, Range 118 West, Section 31, Lot 39 of Star Valley Ranch, Plat 10, Lincoln County, Wyoming;

(B) All of that lot or parcel of land, together with its buildings, improvements, fixtures, attachments and easements, located at 9430 West Ontario Drive, Littleton, Colorado 80123, more particularly described as follows: Lot 28, Block 2, Dutch Ridge Subdivision Filing #2, Jefferson County, Colorado, which property is held in the name of Joseph V. Libretti, Jr. and Claude Jay Cismaru;

(C) All of that lot or parcel of land, together with its buildings, improvements, fixtures, attachments and easements, located at 9328 West Ontario Drive, Littleton, Colorado 80123, more particularly described as follows: Lot 133, Block 1, Dutch Ridge Subdivision Filing #1, Exemption Survey #1, Jefferson County, Colorado, which property is held in the name of Joseph V. Libretti, Jr. and Claude Jay Cismaru;

(D) One silver/maroon 1990 Chevrolet 4-wheel drive pickup with camper shell, VIN 1GCDK14KXLZ218430;

(E) One blue 1990 Toyota Celica GTX 2-door VIN JT2ST85N4L0035365;

(F) Eight Thousand Ten Dollars ($8,010) in United States currency, in that such sum in aggregate was received in exchange for the distribution of controlled substances, to-wit: marijuana, a Schedule I controlled substance, and cocaine, a Schedule II controlled substance, beginning on or about January 1, 1982, and continuing to the present, which money is already in the possession of the United States.

(G) One diamond ring given by Defendant to Claudia Porter, which ring has been given to the government by Ms. Porter and relinquished to the United States.

(H) One 1977 Windsor 14' x 70' mobile home VIN 3CRKFKR1HBEA, Title Nos. 04-0427636 and 04-39651 located in Green River, Wyoming, in the name of Joseph V. Libretti, Jr. and any rents or profits received thereon since the entry of the

restraining order in this matter and from the date of this order forward;

(I) One Heckler and Koch, model MP5 SD, 9mm caliber, full automatic machinegun, in brown case, serial # S 98108;

(J) One Heckler and Koch, model HK MP5 SD, 9mm caliber, full automatic machinegun with silencer, serial # 001183, serial # 98-108;

(K) One Heckler and Koch, model HK MPS, 9mm caliber, full automatic machinegun, serial # 69417;

(L) One Heckler and Koch, model HK MP5, 9mm caliber, full automatic machinegun, serial # 82563;

(M) One Heckler and Koch, model HK MP5, 9mm caliber, full automatic machinegun, serial # 69415;

(N) One Heckler and Koch, model MP5, 9mm caliber, full automatic machinegun, serial # 43-13132;

(O) One Heckler and Koch, model MP5, 9mm caliber, full automatic machinegun, serial # 12433;

(P) One Action Arms, UZI Frame, 9mm caliber, model-A rifle, serial #SA 28093;

(Q) Customer Account Number 008-666555, an IRA savings account, in the name of Joseph V. Libretti, Jr. managed by Columbia Savings, 5850 South Ulster Circle East, Englewood, CO 80111, (telephone number 303-773-3444);

(R) Customer Account Number 60-09495, in the name of Joseph V. Libretti, Jr. managed by Vectra Bank of Lakewood, CO 80215, (telephone number 303-233-8400);

(S) Customer Account Number 1423258, in the name of Claudia Porter acting at the direction and on behalf of Joseph V. Libretti, Jr. managed by State Bank of Green River, 125 W. Flaming Gorge Way, Green River, WY 82935, (telephone number 307-875-7930);

(T) Customer Account Number 429-43-221, in the name of Dee Smith d/b/a Legal Research, Ltd. acting at the direction and on behalf of Joseph V. Libretti, Jr., at Cole Taylor Bank, 350 West Dundee, Wheeling, IL 60090;

(U) Customer Account Number 38103-8 in the name of Joseph V. Libretti, Jr. Beverly E. Libretti, and Joseph V. Libretti at a bank formerly known as First Federal Savings and Loan Association of Des Plaines now known as First Federal Bank for Saving, 749 Lee Street, Des Plaines, IL;

(V) Customer Account Number 460079767 in the name of Joseph V. Libretti Jr. and Joseph V. Libretti at a bank formerly known as North West Federal Savings and Loan Association of Chicago now known as LaSalle Talman Bank, 4901 West Irving Park Road, Chicago, IL 60641;

(W) Customer Account Number 16-11524406 in the name of Joseph V. Libretti, Jr. managed by RAF Financial Corporation, 717 17th Street, Suite 2900, Denver, CO 80202,

(telephone number 303-292-1400), which consists of:

(1) municipal bonds in the amount of approximately $5,166.00 issued by Castle Pines North Net District at 9.75%; and

(2) municipal bonds in the amount of approximately $9,413.00 issued by FHLM Group at 8.25%;

(X) GNMA Customer Pool Number 002941X in the name of Joseph V. Libretti, Jr., certificate number 30296455F managed by Barclay's American Mortgage Corporation, 5032 Parkway Plaza Boulevard, P.O. Box 33213, Charlotte, NC 28233, (telephone number 704-357-7600);

(Y) GNMA Customer Pool Number 6994 in the name of Joseph V. Libretti, Jr., certificate 2799045SF managed by Seattle Mortgage, 229 Queen Anne Avenue North, P.O. Box C, Seattle, WA 98109; including the principal and the following interest checks:

Check No.	Date	Sequence No.	Amount
026583	1/15/92	026583	$ 47.42
025597	2/15/92	025597	196.31
026583	3/15/92	026583	47.42
027565	4/15/92	027565	71.51;

(Z) One First Federal Bank for Savings Cashier's Check #036886, dated November 15, 1991, in the amount of $542;

(AA) One First Federal Bank for Savings Cashier's Check #036885, dated November 15, 1991, in the amount of $250;

(BB) One First Federal Bank for Savings Cashier's Check #036887, dated November 15, 1991, in the amount of $2,890;

(CC) Vectra Bank of Lakewood Cashier's Check #21308, dated July 22, 1991 in the amount of $28,900.00;

(DD) Vectra Bank of Lakewood Cashier's Check #21566, dated August 23, 1991, in the amount of $65,000.00;

(EE) Bankamerica Travelers Check #34 208 802 676 for $50.00 in the name of Joseph V. Libretti, Jr.;

(FF) Bankamerica Travelers Check #334 208 802 677 for $50.00 in the name of Joseph V. Libretti, Jr.;

(GG) Bankamerica Travelers Check #34 208 802 678 for $50.00 in the name of Joseph V. Libretti, Jr.;

(HH) Bankamerica Travelers Check #34 208 802 679 for $50.00 in the name of Joseph V. Libretti, Jr.;

(II) American Express Travelers Check #HH190-845-770 for $50.00 in the name of Joseph V. Libretti, Jr.;

(JJ) American Express Travelers Check #HH190-845-771 for $50.00 in the name of Joseph V. Libretti, Jr.;

(KK) American Express Travelers Check #HH190-845-772 for $50.00 in the name of Joseph V. Libretti, Jr.;

(LL) American Express Travelers Check #HH190-845-773 for $50.00 in the name of Joseph V. Libretti, Jr.;

(MM) American Express Travelers Check #HH190-845-774 for $50.00 in the name of Joseph V. Libretti, Jr.;

(NN) That a check be reissued in the amount of $8,416.23 to the United States, replacing a Mellon Bank, N.A., Pittsburgh, Pennsylvania, Check number 0010502312, dated April 2, 1992, issued to Joseph V. Libretti in the amount of $8,416.23, which sum represents Defendant's 401K savings in connection with his position at General Chemical, to be forfeited as substitute assets for assets dissipated and otherwise expended by Libretti. Notification hereof is to be provided to General Chemical Corp., 90 East Halsey Road, Parsippony, New Jersey 07054, Attn: Susan Degrosky;

2. That this Court further ORDERS that the ownership of the Defendant in all Defendant's firearms and accessories not specifically named herein be and it hereby is abandoned to the Wyoming Division of Criminal Investigation of the Wyoming Attorney General's Office;

3. That the United States Marshal is hereby ORDERED to record forthwith a copy of this Order in the county where each of the above-described real properties are located, and which Order, when recorded, shall be notice to any transferee or potential transferees, of the interest of the United States of America therein;

4. That all of the aforementioned forfeited property described above in paragraph 1 of this Order is to be held

by the United States Marshals Service, and all that abandoned property described in paragraph 2 of this Order is to be held by the Wyoming Attorney General's Division of Criminal Investigation, as indicated, in their secure custody and control.

5. That pursuant to 21 U.S.C. § 853(n)(1), the United States Marshal forthwith shall publish at least once for three successive weeks in a newspaper of general circulation in Sweetwater County, and in each county where forfeited real property is located, notice of this Order, notice of the Marshal's intent to dispose of the property in such manner as the Attorney General may direct, and notice that any person, other than the Defendant, having or claiming a legal interest in any of the above-listed forfeited property must file a petition with the court within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier.

This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in each of the forfeited properties and any additional fact supporting the petitioner's claim and the relief sought.

The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the Order of Forfeiture, as a substitute for published notice as to those persons so notified; and

6. That upon adjudication of any and all third-party interests, the Court shall amend this Order of Forfeiture

pursuant to 21 U.S.C. § 853(n)(6), addressing all such third-party interests.

ORDERED this 23d day of December, 1992.

/s/ Illegible
UNITED STATES DISTRICT
COURT JUDGE

Presented by:

RICHARD A. STACY
United States Attorney

/s/ Louis Piccioni for Gay Woodhouse
GAY WOODHOUSE
Assistant United States Attorney

UNITED STATES DISTRICT COURT

DISTRICT OF WYOMING

UNITED STATES OF AMERICA

V.

JOSEPH V. LIBRETTI, JR.

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

CASE NUMBER: 92CR006-01B

CRAIG TRUMAN, LINDA MILLER
Defendant's Attorney

(Filed Dec. 23, 1992)

THE DEFENDANT:

pleaded guilty to count(s) 6 OF A SUPERSEDING INDICTMENT.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section
21:848

Nature of Offense
Continuing Criminal Enterprise

Count Number(s)
Count 6

The defendant is sentenced as provided in pages 2 through of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The mandatory special assessment is included in the portion of this Judgment that imposes a fine.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
350-64-2663

Defendant's mailing address:
Laramie County Jail
Cheyenne, WY 82001

Defendant's residence address:

December 23, 1992
Date of Imposition of Sentence

/s/ Clarence A. Brimmer
Signature of Judicial Officer

Clarence A. Brimmer, U.S. District Judge
Name & Title of Judicial Officer

December 23, 1992
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of two hundred forty (240) months. Defendant shall participate in the Inmate Financial Responsibility Program regarding the fine and special assessment imposed by this Court.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on ___ to ___ at ___, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

While on supervised release, the defendant shall not commit another Federal, state or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this Court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions.,

The defendant shall not use or possess a firearm, ammunition, dangerous weapons or destructive device. Supervised release shall be revoked for possession of a firearm.

Defendant shall not use or possess any illegal drugs or controlled substances. Supervised release shall be revoked for possession of illegal drugs or controlled substances.

Defendant shall participate in drug and alcohol treatment programs as directed by the U.S. Probation Office.

Defendant shall submit to urinalysis testing as directed by the U.S. Probation Office.

Defendant shall contribute 500 hours of community service as directed by the U.S. Probation Office.

Defendant shall pay any remaining balance of the $5,000.00 fine imposed by this Court as directed by the U.S. Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

1) the defendant shall not leave the judicial district without the permission of the Court of probation officer;
2) the defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
6) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm

the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this judgment.

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $5050.00, consisting of a fine of $5000.00 and a special assessment of $50.00.

These amounts are the totals of the fines and assessments imposed on individual counts as follows:

Count 6 – Fine $5,000.00; Special Assessment $50.00

This sum shall be paid while defendant is incarcerated and any remaining balance shall be paid during the term of supervised release as directed by the U.S. Probation Office.

(Caption Omitted In Printing)

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DEFENDANT'S AFFIDAVIT IN SUPPORT OF THIRD PARTY CLAIMANT CLAUDIA PORTER'S MOTION FOR RETURN OF PROPERTY PURSUANT TO TITLE 21 U.S.C. § 853(n)(6)(A)

(Filed Jan. 22, 1993)

==========

Joseph V. Libretti, Jr., under the penalty of perjury states:

1. I am the defendant in the above entitled criminal case. I make this affidavit in support of Claudia Porter's motion and petition for return of her diamond engagement ring set.

* * *

8. Joseph V. Libretti, Jr. was gainfully employed as an accountant at General Chemical from June 1, 1989 through December 1991. In the 30 months prior to my arrest I earned approximately $110,000.00 working as an accounting supervisor at General Chemical.

9. In 1989 and 1990 combined I earned and reported over $60,000.00 in legitimate revenues and income from additional sources. These income sources included rental real estate, my firearms business, investments, and gambling.

EXHIBIT 2 W-2 FORM

01 62 7500 350642663

1	22222	For Official Use Only ▸
382		

2

GENERAL CHEMICAL
90 E. HALSEY RD.
PARSIPPANY, NJ 07054

		X	
		8533.84	52904.89
22-2689817	027095-01-8	2955.29	47665.89
350-64-2663			47665.89

19a

JOSEPH V LIBREITI — 691.16

800 WILDERNESS TR

GREEN RIVER WY 82935

19b

20

21 25 29

Copy A For Social Security Administration

Dept. of the Treasury—Internal Revenue Service

Form W-2 Wage and Tax Statement 1991

For Paperwork Reduction Act Notice, see separate instructions

172

BEST AVAILABLE COPY

[TRANSCRIPT OF PROCEEDINGS, HEARING
FEB. 9, 1993]

* * *

[13] THE COURT: The question is: Miss Woodhouse just informed the court that the United States has a pending offer to purchase it, and that the co-owner thinks it should be done, the United States thinks it should be done, and if it isn't sold it will be forfeited pursuant to the mortgage and nobody will get anything out of it.

So the question is: Shouldn't the sale be consummated?

DEFENDANT LIBRETTI: Well, first of all, um, I would like to ask if I could be entitled to representation here today.

THE COURT: At this hearing?

DEFENDANT LIBRETTI: At this hearing.

THE COURT: As I understand you have filed these matters pro se, and Mr. Truman has withdrawn.

DEFENDANT LIBRETTI: And that's why I filed them pro se, because I could not afford counsel due to my indigency.

THE COURT: These are matters that don't really relate to your criminal suit except incidentally. I am not sure if you are entitled to counsel being appointed or not.

DEFENDANT LIBRETTI: Then, I guess, at this late [14] date I would like to request appointment of counsel under, I believe it is, Title 28 USC 1915(d).

THE COURT: I will take that under advisement.

DEFENDANT LIBRETTI: Thank you.

THE COURT: In the meantime, tell me what your position is on this.

DEFENDANT LIBRETTI: Well, when I was being represented by Mr. Truman I received a letter after trial that had been sent before trial from Mr. Cismaru saying that I should give him power of attorney for him to sell this real estate, but Mr. Truman said that the government had some type of hold over it, and I don't know that much about it.

Did they file some type of injunction, or restraining order, or something like that?

MS. WOODHOUSE: Yes, we did, Your Honor.

THE COURT: What was done, Miss Woodhouse?

MS. WOODHOUSE: Early on in the proceedings, after indictment, we obtained a restraining order prohibiting diminution or waste of the properties. We would have agreed to a sale if the other parties had agreed to it, but Mr. Libretti did not do so.

DEFENDANT LIBRETTI: I was never approached, Your Honor.

MS. WOODHOUSE: We had an interest at that time [15] of doing that.

DEFENDANT LIBRETTI: I don't know what she is talking about; I didn't agree to any sale, I am not

aware of that ever coming up. This is the first I have heard about a sale of the condominium.

MS. WOODHOUSE: Your Honor, it is not his condominium anymore. You did enter an order of forfeiture as to 50 percent of that condominium in December, and we are simply trying to make sure we can have a sale of that in agreement with the other 50 percent owner.

DEFENDANT LIBRETTI: I have to dispute that again, Your Honor. I wasn't aware that that condominium was included in any forfeiture. There certainly are no proceeds derived directly or indirectly from a violation of Title 21.

THE COURT: The order of forfeiture has been entered in this case. I'm sure you have received a copy of it.

DEFENDANT LIBRETTI: I did not get a copy of that order of forfeiture until I filed my appeal, and much after that, and I had never seen it before. And I had not seen it at the time of the plea agreement.

THE COURT: You have seen it?

DEFENDANT LIBRETTI: Yes. Craig Truman mailed me a copy well after the sentencing even. I had not seen that [16] at the time I entered the plea agreement.

THE COURT: I have just got the last volume of your file in front of me, and I am not sure if that contains the order or not.

MS. WOODHOUSE: It was filed on the 23rd of December, Your Honor.

THE COURT: Let me get up to December.

MS. WOODHOUSE: Your Honor, we dealt with this matter of stay, and I believe Mr. Libretti is not entitled to a stay.

THE COURT: Yes, I have a copy of the order of forfeiture that was filed December 23rd, 1992, and I remember that order, which does forfeit the various items of property that are listed therein.

Was this condominium one of those items?

MS. WOODHOUSE: Yes, it is, Your Honor. I believe it is item (B).

THE COURT: Item (B)?

MS. WOODHOUSE: Yes.

THE COURT: Yes, that's the one that's owned jointly with Mr. Cismaru.

MS. WOODHOUSE: There are two such properties, Your Honor, both are in the early stages of foreclosure, and we will probably be attempting to sell both.

THE COURT: I am going to rule that the United [17] States may do what is financially prudent in this matter rather than go through a mortgage foreclosure. If you can effect a sale that will recover some sort of value out of that you can certainly go ahead and effect the sale.

And you can retain the proceeds of the sale subject to any further interest that Mr. Libretti may wish to assert in that. And we can argue about that later, but in the meantime I see no point in missing a sale.

MS. WOODHOUSE: Thank you, Your Honor.

THE COURT: So let's do that.

MS. WOODHOUSE: As to the stay, though, Your Honor, any proceeds that are obtained during the pendency of his appeal can be returned to him if he wins his appeal on the forfeiture issue, so the stay at this point is not appropriate. It would deny third-party creditors their rights. And he is not a person – it says in 854(n) that the application must be by a person other than the defendant.

THE COURT: Have you got any other pieces of property that are about to be sold –

MS. WOODHOUSE: No.

THE COURT: – or will be sold between now and March 26th?

MS. WOODHOUSE: No, just those two, Your Honor.

THE COURT: Then I don't think it will harm a [18] thing to maintain the status quo pending the hearing.

MS. WOODHOUSE: Well, Your Honor, if he has a stay that means that we cannot accept checks from the banks, you know, in satisfaction of the amounts that are outstanding there that are in your order.

THE COURT: Oh, that doesn't say that. All you are stayed from is from disposing of any of the property that is on hand. In other words, you can't put it beyond the reach of the court.

MS. WOODHOUSE: Your Honor, if it is a stay pursuant to this act it would prevent us from having an ancillary hearing.

THE COURT: But that isn't the kind of a stay that I am granting. I am just saying that the United States pending this hearing of March 26th shall preserve the status quo, except as to these two condominiums, which I have given you permission to sell, provided you maintain – provided you are able to account to the court for the proceeds.

MS. WOODHOUSE: Your Honor, are we permitted to give Mr. Cismaru his share of any profits from that sale?

THE COURT: Oh, sure. Yes. You have got to do that or you can't effect the sale. Cismaru certainly wouldn't sell unless he didn't get his share.

MS. WOODHOUSE: All right. So you are just [19] instructing us basically to preserve the status quo until the 26th of March?

THE COURT: Yes. And on the 26th of March anybody that has any claims against this may appear in court and we will hear them and determine what is said. And before that time I will decide whether or not – I will check into it to see whether or not you are entitled to a court-appointed attorney.

Considering the fact that all of your assets have been forfeited it looks like you probably are.

DEFENDANT LIBRETTI: Not only that, but my legal documents are continually confiscated almost on a biweekly basis now. I really have no – I have been denied

access to a law library the last four days, and I have been denied medical attention. I can barely stand right now. I am under doctor's orders to get Motrin three times a day, and I have been requesting it where I have been incarcerated, and they continually deny it to me.

THE COURT: We will ask the marshal to give him the medical attention that he needs.

MARSHAL NO. 1: Your Honor, he was in the Albany County jail for the last four days because we didn't have room here, and now he is here, and we can take care of it.

THE COURT: Keep him here and then he can get proper attention. I am not sure if he will get it in [20] Albany County.

MARSHAL NO. 1: Yes.

THE COURT: And here they have got a law library in the county jail, too, such as it is.

DEFENDANT LIBRETTI: I have to object to the adequacy of their almost nonexistent law library. They don't even get Federal 2d's.

THE COURT: I have expected it isn't the greatest, but it is better than nothing, I guess.

DEFENDANT LIBRETTI: They don't get Federal 2d's or Federal Supplements.

THE COURT: Yes, I am afraid you are right.

MS. WOODHOUSE: Your Honor –

THE COURT: Maybe they can borrow one for you maybe.

MS. WOODHOUSE: Just for your information, because Mr. Libretti is not a third party, as would be defined by this act, he will not be heard at the ancillary hearing, only other people, and the third parties you named that we will be sending notice to and already have served with the notice will be appearing at that hearing.

THE COURT: I am going to hear Mr. Libretti, too. He is the one who has all of these motions filed.

MS. WOODHOUSE: They are not valid motions, Your Honor; he is not the third party.

[21] DEFENDANT LIBRETTI: Your Honor –

MS. WOODHOUSE: They haven't been filed properly

DEFENDANT LIBRETTI: Your Honor, may I say something?

THE COURT: Yes, of course.

DEFENDANT LIBRETTI: What I am filing for has a lot to do with page 16, Exhibit 1 of the motion. I am not stating my interest in these properties, I am stating my right to protect my credit rating, which affects my financial interests in the future.

And I have more evidence today, but it was confiscated, and I wanted to present that. Had I known that we were going to be hearing this motion today I would have fought harder to bring that evidence with me. It is at the Laramie County Detention Center, and it was confiscated from me.

THE COURT: Well, Mr. Marshal, get his property and bring it here so that he can have it with him, so

that the next time he shows up he will have it. Whoever has got it ought to have the papers in court.

DEFENDANT LIBRETTI: It is all over the country, Your Honor. Some of it was confiscated in Phoenix already.

MARSHAL NO. 2: Your Honor, I have to defend the Marshal's Service here. He knows full well all our [22] policies on prisoner property, where it is supposed to be mailed, how it is supposed to be sent, and he didn't do it properly. When it is transferred somewhere it has to be mailed, it can't go on our plane. And he has traveled all over the country.

THE COURT: Well, I don't know anything about that, all I say is that he is entitled to have copies of his pleadings.

MARSHAL NO. 2: We will find them.

THE COURT: Find them and get them to him.

MARSHALL NO. 2: We will find his legal papers.

DEFENDANT LIBRETTI: Anyway, I am not an attorney, so I am going to say this the best I can. I read this interesting case, I believe it was Singleton v. Wolf, about a doctor who could assert his patient's right to get an abortion because it affected him financially, and very simply if the patient can't get an abortion then he can't get paid.

Well, in my case if creditors like AT&T aren't paid off in the future I won't be able to get a job, buy a home,

obtain credit, or if I can obtain credit it will be at a higher rate than it need be due to the fact that –

THE COURT: As a practical matter, Mr. Libretti, I don't think that that's really a particularly valid argument. AT&T's $4800 will probably be written off long [23] before you get out of jail.

DEFENDANT LIBRETTI: Well, that's fine, but it certainly is going to be a black mark on my credit rating report, and that's the evidence that I was going to present to you today.

THE COURT: But compared to the black mark of a conviction that's really only a shade of gray.

DEFENDANT LIBRETTI: Well, I don't believe my conviction affects my ability to – or my trustworthiness and my reputation, like I have never owed anybody any money that I haven't paid them. And this would be the first time.

THE COURT: You certainly have got a good explanation, you can't pay if people have confiscated your property and took everything from you, so you couldn't.

So as far as that goes it isn't the strongest argument, but I think you can certainly be in a position to show that you have attempted to get payment for your creditors, and that shows your good faith in this matter.

I would consider that if I were one of your creditors.

DEFENDANT LIBRETTI: Well, I believe it would look better if it was paid.

THE COURT: It would be better if it was paid, I agree with you there. All I want to do is give everybody a [24] chance to be heard.

DEFENDANT LIBRETTI: Okay.

* * *

[28] MS. WOODHOUSE: Your Honor, because it is unusual, if not unprecedented, to have a defendant appear at an ancillary hearing, we would like to know what you are going to allow Mr. Libretti to address at that hearing.

THE COURT: Whatever fairness seems to require.

MS. WOODHOUSE: So you will allow him to appear on behalf of the third-party creditors?

THE COURT: I am going to allow Mr. Libretti to appear at the hearing, I am going to allow him to say what he thinks he needs to say. I will hear him. That's the purpose of this.

He, too, has an interest in this matter.

* * *

[TRANSCRIPT OF PROCEEDINGS HEARING MAR. 26, 1993]

(Examination Of Claudia Porter)

[11] Q. All right. Do you have anything else to add onto this property?

A. There was also an engagement ring that was taken.

Q. I was going to ask you about that. Tell me about it.

A. Well, when Joe and I decided that we were going to get married, we went together to design this engagement ring.

Q. When was the engagement ring given to you?

A. Would have been October of '90, I belief.

Q. '91?

A. I am not very good with dates, obviously.

Q. Same year as the Wyochem account was transferred?

A. It was a year before.

Q. In 1990?

A. (Witness nods head up and down.)

Q. All right. And tell me about it.

A. Well, it was given to me.

Q. Did you go with him to buy it?

[12] A. No. The diamond was purchased separately and he gave me the diamond then we went together to

design the ring itself to a place called Purvis Jewelers in Denver.

Q. I see. Were you aware of the financing of it?

A. I knew that he had charged the setting itself on his credit card.

Q. All right. And how about the stone?

A. That I don't know.

Q. As far as you know, it was an outright gift?

A. Yes, Your Honor.

Q. Did you have any reason whatsoever to believe that this gift was the product of drug money?

A. No, Your Honor.

• • •

[38] Q. (BY MR. O'DONNELL) All right. And the ring was the year prior to that, approximately in October of '90 or '89 – '90. Excuse me.

Now I gathered from your testimony in answer to Miss Woodhouse's questions that you had some indication at various times during your relationship with Mr. Libretti that there was something going on that should not be going on?

A. That's correct.

Q. Did you, however, regarding these two pieces of property have any knowledge that there was any drug money involved in their purchase or acquisition?

A. No, I did not.

[39] Q. The $1333 that remained of the $9300 was yours to use as you saw fit?

A. That's correct.

Q. Would you characterize that as a gift from Mr. Libretti to you?

A. Yes I would.

Q. And would you, likewise, characterize the ring as a gift from Mr. Libretti to you?

A. Yes.

MR. O'DONNELL: That's all I have. Thank you.

THE COURT: Miss Woodhouse?

RECROSS-EXAMINATION

Q. (BY MS. WOODHOUSE) Miss Porter, isn't it true that you actually turned that ring over to Toni Young, gave it to him?

A. I was cooperating with Toni Young, yes.

Q. And you gave it to him?

A. Yes, I did.

Q. And at the time you gave it to him, you said you knew it was at that particular time tainted and you didn't want anything to do with it?

A. No. I didn't say that.

Q. You said you knew that the defendant had drug you into this thing and you didn't want to be any part of it?

[40] A. I was angry at the time and the engagement ring lost some of it's value as far as being the love that was attached to that, yes. But I did not state that I thought it was bought with tainted money and I didn't want anything to do with it. I was tired of the whole ordeal and very worn out.

Q. And you wanted to get rid of it?

A. No. I did not want to get rid of it. He asked for it and I was willing to give it to him.

* * *

[41] BEVERLY LIBRETTI,

called for examination on her own behalf, having been first duly sworn under oath, testified as follows:

EXAMINATION

Q. (BY THE COURT) All right, now, what claims are you making?

A. There are two bank account books.

Q. And these are the –

A. One is.

Q. –the account books? I've forgotten the names.

A. One is from First Federal Savings and Loan of Des Plaines.

Q. First Federal?

A. And one is from a bank called –

Q. That was in Des Plaines, wasn't it?

A. Yes. It has a different name now. Actually, I thought I saw it here.

Q. Let's see, there is a Des Plaines account and a LaSalle and Talman account.

[42] Go ahead and tell me about them, Mrs. Libretti.

A. Oh, okay. I thought I saw it in here, but now I don't. Well the bank book from First Federal Savings and Loan has my husband's Social Security number on it. It was opened when Joe, Jr. was very small. We opened two accounts, one for our daughter and one for him. And it was a bank that my husband and I – our savings.

Q. What you are saying is that the money that went into it didn't really come from drugs.

A. It has absolutely nothing related to this. When all this happened, my husband was asked to send anything that we had that had Joe, Jr.'s name on it and we happened to have those two books. And I'm certain Joe, Jr., never was not even aware of this savings account at First Federal.

Q. This is just something –

Well, he was very little and we opened one for my daughter and one for him.

Q. How much are we talking about?

A. I have no idea. I don't take care of the banking or any of the money in our house, but when he was little

and he got birthday money, maybe allowance money, confirmation money, this is where it went. Perhaps I did take him up and he put it in. And since he went away from college – then when he was in high school he [43] opened his own account at the –

Q. That was the LaSalle-Talman?

A. Right.

Q. And he opened it in high school?

A. Right. Because it was about four blocks from our home. He could ride his bike there, deposit his own money, take it out, do what he wanted to with it. But this First Federal one I am certain he really does not even remember it. The reason I don't think he remembers it is because this summer our daughter was home for a few months and she was going on a trip and she needed traveler's checks, and I said, "Oh, our First Federal Savings will give them free to their customers. I will go up with you." And my husband said, "Well, why don't we just give her that bank book that's hers?" And she was absolutely delighted. She had no recollection of it and she had about $700 extra to spend on her vacation. And we have the same kind of a book for Joe, Jr. And I'm sure that – I'm sure he didn't even remember that.

Q. Probably about the same amount?

A. I – probably. I really honestly have no amount.

Q. You treat them both alike?

A. My husband would go up and put the interest on them and he always paid the taxes on them, but I don't

do any [44] of the financial stuff in our family, so I have no idea.

I know it's not great amounts and the Talman bank, that was his. So I don't know how much was in there and I know that he bought a car his first Christmas home from college, and I know he took money out. I think that's where the money came from. And that's all I know about that and I don't know – I'm sure there aren't great amounts in there either.

Q. Now, is there other property to which you are making claim?

A. Joe, Jr., wants us to have the land.

Q. The Star Valley Ranch lot?

A. Yes. I've never seen it. But when all this came about in December, his father –

Q. Am I correct in my assumption that the doctor, your husband, is very busy and couldn't come out himself and so he sent you in his place?

A. Yes. That's correct. He is in a practice with other people and there are other people on vacation.

Q. You are speaking on behalf of him and you both?

A. So I am speaking for him also, yes.

Q. And tell me about the ranch. transfer.

A. Well, when this happened my husband gave money for an attorney to represent Joe.

Q. That would be for Mr. Truman?

[45] A. Yes. And Joe, Jr., wanted to repay his father, and this is my understanding of it, the only money or the only thing he knew to do at the time was he knew he had this land and so he turned it over to his father.

Q. Did you and the doctor know at this time that the lot had been purchased with drug proceeds?

A. Absolutely not.

Q. You didn't know where it came from, I presume.

A. No. We knew he had a Lakewood Firearms business, but we knew nothing about drugs until all this has come out now.

Q. You knew he was also working, I presume?

A. Yes. He's always worked. He's loved to work.

Q. So, you felt that he had two sources of legitimate income?

A. Yes.

Q. The firearm business?

A. Lakewood Firearms and General Chemists.

Q. And General Chemical Company?

A. Yes.

Q. Anything further?

A. No.

THE COURT: All right. Perhaps you'd like to take the witness stand, Mrs. Libretti, and let counsel cross-examine you and we will proceed further.

[46] CROSS-EXAMINATION

Q. (BY MS. WOODHOUSE) Mrs. Libretti, if I understood your testimony concerning the two accounts, you're not saying that you actually – you or your husband have an interest in those accounts personally?

A. Well, yes, we want them back. I especially want the First Federal Savings & Loan one back. It has my husband's social security number on it. What went in there has absolutely nothing to do with what transpired since.

Q. I understand that. But you're taking the position that it is your money that you will use yourself?

A. Yes. I'm not saying I'm going to use it. Perhaps I'll put it in there and save it until Joe gets out and needs something. But I don't know what I'll use it for, but I think it is ours.

Q. But you're –

A. A lot of that is ours from birthdays and things like that.

Q. Your testimony was that last summer you gave a similar account to the sister Jodi when she was traveling?

A. Um-hum.

Q. And it would be your intention to do something similar with this money?

[47] A. I don't quite understand what you are saying.

THE COURT: Let me ask you this: Would you say, Mrs. Libretti, that it was an uncompleted gift? In

other words, that you and the doctor had been putting funds in there from his childhood, but that he was unaware of it and you had never given him the passbook and you never did anything with the passbook until federal officers came and then you gave it to them; is that a correct statement?

THE WITNESS: I would say yes. I'm not certain that as a little boy, when birthday money came or something that maybe we didn't all walk up to the bank and he put it in.

THE COURT: He might have been with you?

THE WITNESS: Yes. So that he felt like, you know, he was doing some banking or something. I'm sure we've all done that with our children.

THE COURT: We all have.

THE WITNESS: But what I would do with it, I can't say what I would do with it. I just feel that it has absolutely nothing to do with what this case is and I feel that we are entitled to have it back.

Q. (BY MS. WOODHOUSE) Just one question. I believe that the actual – the passbooks on both of these accounts were turned over by your husband to his [48] attorney Mike Monico as Joe, Jr.'s, property after the restraining order was entered in this case. Do you have knowledge of that? They came to us from Mr. Monico.

A. We were asked to turn over anything that had Joe, Jr.'s, name on it.

Q. Okay.

A. And that's how this came about.

Q. But both these accounts are in Joe, Jr.'s, name, right?

A. They have his name on them.

Q. Yes. As well as yours?

A. One has mine and one has my husband. And because the one that has my husband's Social Security number on it is because as a child Joe, Jr., didn't have a Social Security number –

Q. So that was the reason?

A. – is how I understand it.

Q. That was the reason for that?

A. Now I understand all children need a Social Security number as soon as they are born but –

Q. Didn't used to be that way, did it?

A. No.

Q. Now, it's a little bit difficult for me to ask you these questions but –

Your Honor, would ask the Court's permission [49] to refer to grand jury testimony that was given by Dr. Libretti concerning the transfer of the property?

THE COURT: Well, I'll take notice of it.

MS. WOODHOUSE: Okay.

Q. (BY MS. WOODHOUSE) We interviewed your husband before the grand jury and he told us that he had

received a deed for that Lincoln County property in the mail and prior to receiving the deed, he had no knowledge or information concerning why he would be receiving this deed. It was just something he received. Are you aware of that?

A. Yes, I am.

Q. And that he paid absolutely nothing for this property. He did not say, "I'll buy the property from you for $1,000," or – there was no negotiation or sale.

A. No. We didn't buy it. But Joe, Jr., had wanted us to have it to pay back some of the money that my husband had put out for Mr. Truman.

Q. But the money –

A. I mean, it was – this was his only way that he had to pay back his father.

Q. That's your understanding now?

A. No. This is how I understood when it came.

Q. Oh, there was a letter with it?

A. No. Actually there was – in the beginning, [50] Mrs. Porter and I had a lot of telephone calls, understandably, because this was pretty upsetting. And one day she told me that Joe wanted us to have the land to pay – to help pay for some of this money that we had put out for Mr. Truman. And I said, "Well, you don't – he doesn't have to do that."

And she said, "He wants to do that." And then the letter came, or the deed came. So it was his only way that he knew of to repay his father.

Joe has always been very independent and never asked us for anything. He's always paid his debts, I'm certain, and this was his way of giving his father something. He had nothing else.

And we had no idea that, as you are inferring, it was bought with drug money.

Q. Your husband testified in the grand jury that he did not expect to be repaid for the attorney's fees and had made no arrangements with Joe, Jr., to be paid for the attorney's fees, and this was on January 28, 1992.

A. That's true. We didn't ask for anything in return.

Q. And Claudia Porter testified that she didn't know why the land was being transferred when she testified on January 29th of '92. She had no recollection of why that transfer had occurred. All she knew was that it [51] had been done and she sent the paperwork on to you.

A. Well, I can't say for that.

Q. That's not what she told you, apparently.

A. It was my understanding the way I told you.

MS. WOODHOUSE: A moment, Your Honor?

THE COURT: Surely.

Q. (BY MS. WOODHOUSE) Mrs. Libretti, if you may be refreshed a little bit, I believe that in the initial phases in January of 1991, right after your son was arrested, Mr. George Zunker represented him and it – and Mr. Truman was not even hired until his entry of appearance is in April of 1992.

A. Okay.

Q. Are you aware of that?

A. I believe we sent a retainer to Mr. Zunker also. You know – I'm sorry – you are right about Mr. Truman. This is Mr. Zunker that we are speaking of, because it was Mr. Zunker. We also sent money to Mr. Zunker.

Q. Prior to this, the transfer?

THE COURT: It was Zunker, and not Mr. Truman?

THE WITNESS: Yes.

THE COURT: I see.

THE WITNESS: I'm sorry. I don't – Mr. Truman was so long, I keep thinking Mr. Truman. It was Mr. – it was Mr. Zunker.

[52] MS. WOODHOUSE: Excuse me a moment, Your Honor.

THE COURT: Surely.

MS. WOODHOUSE: No further questions, Your Honor.

THE WITNESS: Excuse me. It was March that Mr. Truman came on the scene. So when I referred to an attorney, I meant Mr. Zunker. I think someone mentioned Mr. Truman's name and that's why Mr. Truman.

THE COURT: Okay. Thank you, Mrs. Libretti. Now Mr. O'Donnell has some questions.

MR. O'DONNELL: Thank you, Your Honor.

CROSS-EXAMINATION

Q. (BY MR. O'DONNELL) Mrs. Libretti?

A. Yes.

Q. The government was kind enough to provide me copies out of those passbook accounts, and I wonder if you and I could look at those for just a moment.

A. Yes.

Q. Let's start at the account at First Federal Savings on the – or at least it used to be known as First Federal Savings – can you look at these copies and understand how the bank account works? Can you determine from looking which columns are savings, withdrawals, which are savings deposits, et cetera?

A. Um-hum.

[53] Q. And I'll need you to answer audibly for the court reporter, please.

A. Yes.

Q. Thank you. Would you tell His Honor when the last deposit was to this savings account? As I looked at it, I thought it was in 1975. Would you tell me if you see anything different? And be careful not to confuse what might be interest accrual deposits as opposed to an independent deposit.

A. This is a savings added. Okay.

MS. WOODHOUSE: Here is the passbook.

THE COURT: Thank you, Ms. Woodhouse.

Q. (BY MR. O'DONNELL) Do you see savings to be added to the savings? Do you see a deposit?

A. July 7, 1975.

Q. Do you see any other added entries in that account after 1975?

A. No. No, I don't.

Q. It just has multiple pages?

A. No, I don't.

Q. And the name on this First Federal account, the account is titled in whose names?

A. Joseph Victor Libretti, Jr., and Beverly Libretti and Joseph E. Libretti.

Q. Beverly and Joseph E. Libretti are you and your [54] husband?

A. That's correct.

MR. O'DONNELL: Your Honor, I realize the copy is not the best evidence as you have the best evidence in front of you.

THE COURT: Yes. I have the original in my hand right now. Mrs. Woodhouse handed it to me.

MR. O'DONNELL: I would enter into the record the copy.

THE COURT: Yes. I think the copy should be received rather than the original. How is it marked?

MR. O'DONNELL: It is not marked.

THE COURT: Let's mark it Libretti Exhibit A.

(Defendant's Exhibit A

marked for identification.)

Q. (BY MR. O'DONNELL) And so we have a clear record for a later time, Mrs. Libretti, what the clerk of court has been kind enough to mark as Defendant's Exhibit A, when you were referring a few moments ago to no deposits since 1975, were you referring to this document, Exhibit A?

A. Yes.

(Defendant's Exhibit B

marked for identification.)

Q. (BY MR. O'DONNELL) Okay. Thank you. Now, let's [55] mark another document and we will do this in a better order. I will now hand you what I have marked as Defendant's Exhibit B and ask you if you know what this is.

A. Yes.

Q. What is it?

A. It's a savings account at – from Joe, Jr.

Q. Is this the LaSalle account you referred to earlier?

A. Northwest Federal Savings account book.

Q. And perhaps –

A. It has a different name now.

Q. Is this that other account that you referred to in your testimony?

A. Yes.

THE COURT: This is called Northwest Savings & Loan Association, but is that the same?

THE WITNESS: It has another name now. I think it's LaSalle-Talman.

THE COURT: LaSalle-Talman is now the name?

THE WITNESS: I think so.

THE COURT: Okay.

THE WITNESS: I told you I don't do the banking.

Q. (BY MR. O'DONNELL) You're doing fine, Mrs. Libretti. Would you do the same thing for us with [56] this account as you did with Exhibit A and tell us whe the last deposit is shown on the records to be made into the account as best you can determine?

A. As best I can determine – this is the deposit?

Q. Let me make a representation to you here that the far right-hand column has a heading that says "Balance," and it appears to me the balance column has slid a little to the left over time. Can you tell me if that is correct with your understanding?

A. Yes. That's how it looks.

Q. Understanding that the columns may not be completely aligned, can you tell when the last deposit was to this account that was not accrued interest?

A. December 28th, 1981.

Q. All right.

A. Is that –

Q. I am asking you is that what appears to you?

A. That's what it appears to me.

MR. O'DONNELL: All right. Again, Your Honor, we offer Exhibit B.

THE COURT: Exhibit B is received.

(Defendant's Exhibit B

received in evidence.)

MR. O'DONNELL: Thank you, Mrs. Libretti. Oh, I forgot one question.

[57] Q. (BY MR. O'DONNELL) This account is in whose names?

A. It's in Joseph B. [sic] Libretti, Jr., and Joseph E. Libretti.

Q. And Joseph E. Libretti is your husband? And you are here on his behalf today?

A. Yes. I am here on his behalf.

MR. O'DONNELL: Mrs. Libretti, thank you very much. That is all I have, Your Honor.

THE COURT: Miss Woodhouse?

RECROSS-EXAMINATION

Q. (BY MS. WOODHOUSE) In each of these accounts they are opened in the names as joint tenants with right of survivorship. Did you read that on the first page where you sign on the account that's just Joe, Jr., and Joe, Sr., which is now the Talman Home account? It says held as joint tenants with right of survivorship; is that correct?

A. That's what it says, yes.

Q. And on the other account – do you have that? – it's in all three of your names and also printed, though it says as joint tenants with right of survivorship?

A. Yes, it does.

Q. Now, the transfer of the Lincoln County property is only to your husband; isn't that correct? It's not to both of you?

[58] A. As far as I know it's to my husband, yes.

MS. WOODHOUSE: Thank you. Nothing further, Your Honor.

MR. O'DONNELL: That's all I have, Your Honor.

THE COURT: All right. Thank you, Mrs. Libretti. Did you have anything else you wanted to add on behalf of yourself and the doctor as a claimant?

THE WITNESS: No. Unless Joe has – junior – has something.

THE COURT: And we'll hear from him later.

THE WITNESS: Okay.

THE COURT: Okay. Thanks very much. You may step down.

Now, are there any other third party claimants in the courtroom?

Apparently not. All right. At this time I'll be glad to hear any rebuttal that you wish to present, Miss Woodhouse, with regard to these claims.

MS. WOODHOUSE: At this time, Your Honor, I'll call Special Agent Tony Young.

THE COURT: Mr. Young you will come forward.

(Witness sworn.)

TONY YOUNG,

called for examination by the Government, being first duly sworn under oath, testified as follows:

[59] DIRECT EXAMINATION

Q. (BY MS. WOODHOUSE) Please state your name.

A. Tony Young.

Q. Mr. Young, you're employed by the Division of Criminal Investigation for the Wyoming Attorney General?

A. That's correct.

Q. And as part of your employment, you were engaged in a drug task force for major crimes in Wyoming?

A. That is correct.

Q. And that was a joint federal investigation?

A. Yes.

Q. During the course of your employment, you were involved in the Joseph Libretti investigation over a long period of time, weren't you?

A. Even through today, yes.

Q. Okay. Can you tell the Court basically what you learned about the income and quantities of drugs that were distributed – the income that Mr. Libretti received during the course of his drug distribution?

A. Well, for many different sources the total amounts of cash are hard to determine. They are well in excess of one million dollars from the time that he entered college in Denver – in the Denver area – from 1981 through the time of his arrest and even after that time, the liquidating of his assets.

[60] Q. Is that profit?

A. That would be profit, yes.

Q. Can you outline for the Court some of the significant cash transactions involved by the defendant and compare that to how much he was making at legitimate jobs at the time?

A. Well, I've reviewed many of the bank records from his banks that he had in the Lakewood, Colorado, Denver metropolitan area from the time that he moved there to the time that he, in fact, is claiming he had accounts and moved up to Wyoming.

Now, the first significant purchase that I recall the defendant having made was during his college years or just after he graduated from college in the fall of 1985. He purchased a home for just under $200,000 in Lakewood. They put down – he and his wife-to-be at that time put down about $104,000 cash, of which Mr. Libretti provided 74 to $75,000. Miss Cambruzzi – at that time that was her name – she placed $30,000. During this time I noted that his reported income in 1985 was $12,000.

Q. And do you know where he was working at the time?

A. As I recall, that was – I believe it was Red Lobster Restaurant. In 1986, just after the turn of the year, I believe it was in February, he purchased a GNMA [61] certificate, as I recall, for about $9,000 cash, again, reviewed from all the bank records that we have. Many large cash purchases in 1986. He obtained a gun license and started a business known as Lakewood Firearms Supply.

Q. Are you aware of a cash – a deposit made and a purchase of a GNMA certificate in the summer of 1986?

A. Yes. Although the amount evades me, I think that was a $6,000 – was that the $6,000 ones?

Q. Our records show $20,000.

A. $20,000. I don't recall that specific one.

Q. And are you aware of the amount that he reported as income for 1986?

A. 1986 – I'd have to look at those notes again. I think it was $11,000.

Q. That was the year he filed jointly with his wife $47,000?

A. That was 1986 or 1987.

Q. '86. I have some notes we prepared yesterday that might assist you.

A. Yes. That's 1986 was the year he filed jointly with his spouse. Total income reported there between the two of them was $47,200.

Q. Can you go on with other significant cash purchases made by the defendant?

[62] A. Other significant cash amounts that the defendant had during that time, for example, in 1987, while attending a family reunion in the Chicago area, he placed $48,000 cash into a safe-deposit box with his little brother.

Q. That brother's name was?

A. William Libretti. In 1987 he began purchasing the firearms. I don't recall the exact amounts of the money for those firearms, but this is when he obtained his machine gun license, as I recall, was in 1987.

Q. And there were tens of thousands of dollars involved in that; isn't that correct?

A. Well, our estimates of all the machine guns and everything that would have been seized, we know from the records that we have subpoenaed and reviewed from the purchasers, he spent over a quarter million dollars on firearms. The current appraisal of that firearm collection was at about 192,000.

Q. Now, during 1987, what – are you aware of what he reported as income to the IRS?

A. In 1987 he reported $11,000 income. It's also significant to note that during this time he was divorced from his wife and paid her a settlement on the house. Now he kept the house and he paid her an additional cash settlement of $45,000. He did that with [63] a cashier's check totaling roughly $9,000 each he paid to her in cash. This is exclusive of the 48,000 that he placed in the safe-deposit box in Chicago.

Q. And you're also aware of significant drug distribution activities during these time periods?

A. Yes. Also in 1987 Ray Rivera had the misfortune of breaking into his storage locker and stealing from him $10,000. He also, as we heard from Miss Porter in our interviews, had the money or had cash stacked into a briefcase. Mr. Rivera estimated that amount to be at 150,000.

Q. When you say – who do you mean, the defendant?

A. Mr. Rivera stated that.

Q. About the defendant?

A. That's correct. And the defendant did confirm, in fact, to the investigators that $10,000 had been taken from him in that storage locker. That's what I recall for 1987.

Q. Do you remember significant cash purchases in 1988?

A. Could you spin the chart to me so I can look at that? I prepared that so I – in the year of 1987 his

reported income was $11,000. Then we go into 1988 when he purchased $19,000 worth of weapons in January. He also – I'm sorry, that's 1989. In 1989 he purchased $70,000 worth of weapons.

[64] Q. In 1989?

A. That's correct. 1988, rather.

THE COURT: How much was it in '88?

A. $70,000. And 1988 he reported his income at $16,000.

Q. (BY MS. WOODHOUSE) And significant purchases or cash observed in 1989?

A. Yes. In 1989 that's when he bought the bonds from the RFA financial. He paid $9,000 cash for those. When I say cash, I mean these were done with cashier's checks, money that was cash taken into the banks that was converted into cashier's checks. It was also in 1989 that the defendant instructed his little brother William to remove cash from the safety-deposit box that they had opened in 1987.

Q. With the $48,000 in it?

A. That's correct.

Q. He had his little brother send him two different checks, one for $10,000 and another one for $11,000. So he received $21,000 from his little brother there in 1989? And you recall that that was the summer of 1989?

A. That's correct. July, in fact.

Q. And that was just prior to some significant purchase of the defendant –

A. There –

[65] Q. – of property?

A. There was in July of 1989. He received that money in August of 1989, he paid $16,800 cash for a brand-new Ford pickup from Rosa Novak Ford.

Q. Okay. Any other significant purchases he made?

A. Also at this time, from June of 1989, the defendant had taken a job. He had had – as we understand his employment history, he had worked for Red Lobster. And then he worked for a short time at King Sooper's store. His total net pay at Red Lobster for the time he was employed there was $11,000. And then he worked for King Sooper's for a short period of time. And then he worked for – recall it was Tenaco retail sales. It's a gas station, quick stop gas station mini mart type arrangement there in Denver. I don't have any reported – no known solid income or business that he was working at in 1988. In 1989 he took employment with General Chemical in Green River, Wyoming, on a part-time basis.

Q. When? In 1989?

A. That was in June of '89. And he worked from June of '89 until, I believe it was September or October of '89 when he was hired on full-time as an accountant.

THE COURT: Then he only worked from June to October?

[66] THE WITNESS: June to October of '89 – September of '89, at which time he was then hired full-time as an accountant.

THE COURT: Oh, I see.

THE WITNESS: It's my understanding that summertime was a probationary or intern type employment.

THE COURT: It was a part-time as an accountant.

THE WITNESS: Yes. During that same time. That's when he purchased the mobile home; again, paid cash for that in Green River.

Q. (BY MS. WOODHOUSE) At a value of what?

A. $6,000. His 1989 income reported was $26,400.

Q. And when was that filed, if you know. Was it subsequent to your investigation?

A. Not in 1989. The 1990 form was filed subsequent to our investigation.

Q. Okay.

A. No. Perhaps both of them were, now that I think of about it. 1989 and '90 were filed after he became aware of our investigation again.

Q. In 1991?

A. Right. Now in 1989, in the fall of 1989, he met Claudia Porter and began a relationship with her. From the time that he came to Rock Springs or Green River [67] rather, and stayed there until his arrest, June of '89, through December of '91, that's when he made these 57 airline flights between Rock Springs and Denver. In fact, he flew almost every weekend down there and many weekends he drove as well.

Now, my interviews with many of the codefendants, many of the codefendants stated that he would come down to handle all the drug sales on the weekend. And that's when the procurement of the drugs would take place from his suppliers. He would pay for them.

During 1989, and 1990, he formed an association or relationship with Richard Sabell and Brian Urso. From the two of these individuals, he purchased no less than 24 kilograms of cocaine from them. Now, oftentimes these purchases occurred during the week and the defendant Mr. Libretti was in Wyoming, so the payments had to be effected from cash stores that he had kept in his safe. The defendants told me that on more than three occasions that they had made these payments and perhaps as many as six, they had opened the large safes that Mr. Libretti kept his cash in and would pay sums of 60 to $80,000 for two kilograms of cocaine, and in the safes they saw as much as $180,000 in cash stored in the safes.

[68] The reason that he, the defendant, the codefendants told me that he was now keeping money in his safe at home is because he had been burglarized when he stored it at his storage lockers. And he had lost it. Of course, that corroborated Mr. Rivera's testimony that he had taken the $10,000 out of the storage locker.

MR. O'DONNELL: Excuse me, Agent Young.

Your Honor, for one thing, I am having a difficult time objecting, because Mr. Young is narrating. Also, I thought he was called as a rebuttal witness to third party claims, and I have yet to – I object to the entire line of questioning.

THE COURT: Well, it's, I suppose, foundation testimony from that standpoint, but you are proceeding by narrative, so do it by question and answer so Mr. O'Donnell can object.

MS. WOODHOUSE: Thank you, Your Honor. I'm not sure where we were.

THE COURT: We were talking about the 180,000 in the safe at home.

MS. WOODHOUSE: Okay. Thank you, Your Honor.

Q. (BY MS. WOODHOUSE) You indicated that certain of the codefendants had seen that sum of money in the savings and it was being kept there because Mr. Libretti no longer felt safe keeping it in storage lockers. Are [69] you aware of other cash sums of money kept by Mr. Libretti?

A. Yes.

Q. You may – you don't have to stop there, you may proceed and tell us about those sums.

A. Well, large sums of cash money were witnessed by Claudia Porter. Claudia Porter was the one who told me that she had seen him empty this Marlboro bag onto the bed with huge sums of cash in which – now she said that she didn't know how much money it was, but that Joe had told her it was $100,000 cash.

Q. Can you tell us when this happened?

A. This was in the fall of 1990. It was after her trip that she and Joe had taken to the Portland, Oregon, area.

She recalled that trip in the latter part of August and early part of September, 1990.

She and Joe flew to Portland, Oregon. She was in a Narcotics Anonymous meeting. She said that Joe took a briefcase – her words – filled with cash; that they had a disagreement over why he had taken so much cash. She was suspicious of his activities.

I need to point out that Claudia Porter has been interviewed and I've talked to her many, many times since late 1991 and through 1992. I would not characterize her as being a helpful witness.

[70] MR. O'DONNELL: Well, Your, Honor I object. That's completely improper.

THE COURT: Sustained. You can't really comment on the testimony of other witnesses, Mr. Young.

THE WITNESS: I'm sorry.

Q. (BY MS. WOODHOUSE) Just tell us what you know from her interviews.

A. I knew from interviews with her, from one subsequent interview, as the interviews followed each other, I learned that she had not told us the complete truth from the prior interviews. And as each and every interview went down the road, I learned more and more about her activities and her association with Joe Libretti.

Q. Tell us what you did learn.

A. I learned that she – through her, she had attempted to break into the locker at the General Chemical plant; that she was instructed to dress like a man, put

on a false moustache, wear a hard hat, carry a lunch pail, go in after dark, sneak past the guard gate. She was armed with the combination of a particular locker number.

Now this made sense to us because we knew Joe Libretti had the locker there. We were mistakenly – in December of 1991, we searched only one of two lockers and we did not find that out until he – we didn't find out that he had two lockers until much later; that she [71] had attempted to go into the locker area. She tried the combination of a few locks, she couldn't get in. Her intent, given her – she intended to remove cash from the locker, her statements.

Joe had told her that there would be cash in the locker and that she should remove it. She said that she never did remove it. Then later she confirmed in another interview that she had cash, and in fact, the cash had been concealed and missed in several searches while we had been at her house.

The cash in the paint can. We had had several interviews with her prior to her revealing to us the principles of the cash in the paint can. She told the story of them not having enough money to go on a ski trip to Alta. When she didn't have the cash and Joe didn't have the cash, Joe went down – this was in the Thanksgiving of 1991 as I recall. They didn't have enough cash. He went downstairs, came back up with a set of rubber gloves on with paint dripping off of them. This precipitated another argument that they had about his having told her that he was completely removed from the drug business and now she saw evidence that he wasn't.

Q. Backing up a little more, there was an incident at Hardee's in Loveland where there was a transfer of drugs [72] between Mr. Schlosser and the defendant. And you were told by Miss Porter of her impressions of that incident. Can you tell us what she was told about that as well?

THE COURT: Excuse me. What she was told or what she told Agent Young? I didn't –

MS. WOODHOUSE: Actually, I said what she was told.

THE COURT: By whom?

MS. WOODHOUSE: By the defendant.

A. She said that she was with the defendant when they arrived at the Hardee's Restaurant. In fact, they had stopped there on many occasions on their trips down to Denver and they would eat there. They met with Dave Schlosser. Mr. Libretti and Dave Schlosser went into the restaurant and conducted what she characterized was a transaction. She did not say that she saw the actual hand off. She didn't see exchange for drugs and money, but she knew that something was up. She confronted Libretti about it. He told her – this quoting Miss Porter – his pat answer, "It's best if you don't know."

The discussion – she wasn't satisfied with that particular part of that answer on this occasion, and that at that time, Joe promised her that this was the last time he would do it. He then went on into – they then went on into Denver. That's the detail at [73] Hardee's. Of course, I have interviewed Dave Schlosser and he confirmed that that exactly happened.

Q. On that date?

A. Yes.

Q. The phrase of the defendant telling Miss Porter, "It's best if you don't know," had been used numerous times during their relationship; isn't that true?

A. That's what she told me, yes.

Q. And basically, that covered his drug activities that she was knowledgeable of, even if not directly told?

A. And she told me that she wanted to believe – she was in love with him, and she wanted to believe that he was not involved in drug trafficking.

Now, by April of 1992 when we're still conversing and she's turning over keys, safe-deposit box keys to the government, she tells a story of him taping the money to his body. She found the money.

Q. And that was in December of 1990?

A. December of 1990. She's relating many incidents. She looks back and characterizes to me that she was – she was very foolish to have not known immediately that he was involved in narcotics.

She herself had been – had had a problem with it in her past. But that she wanted so much to believe that it wasn't true, that she convinced herself that [74] this was just the residual profits coming in from his past dealings. She knew that wasn't the case.

I believe it was March or April 1st or March 31, somewhere in that area, when we recovered the one and a half kilograms of cocaine that was buried on his property,

the Star Valley Ranch property in Star Valley next to her parent's property.

Q. And that was located directly on his property?

A. That's correct. No. I'm sorry. That was not actually on the property. That was off his property. I believe it was about 30 or 40 feet from his lot.

Q. From his lot line?

A. That's correct.

Q. And these are undeveloped properties?

A. That's correct, yes.

Q. Now, can you tell us about the purchase of the Lincoln County property by the defendant?

A. I can tell you that my interviews with Claudia Porter, her parents, Eldon and Barbara Staley own a lot with a cabin on it. In fact, I've been to that location, in Star Valley. That they would sometimes go up and spend the weekend with Claudia's parents and the Staleys; that he became interested in purchasing a lot, and he did so in August of 1990. And he purchased that lot from Chester Byrd for approximately $20,000.

[75] Now that transaction, that money I traced through the bank accounts was from cash deposits placed into banks in the Denver metropolitan area where cashier's checks were then purchased. Those cashier's checks were turned around and deposited into another bank where they were turned around into another cashier's check that was transferred into the Wyochem General Chemical account in Green River, Wyoming, at which

time they issued a cashier's check to the Wyoming Land and Title that was the actual closing agent. And then the funds, of course, were provided to Byrd, the seller, and then the title to him as the purchaser.

Q. And what was the amount of that property?

A. Approximately $20,000.

Q. And is the value of the property approximately the same at this date?

A. I believe it is, yes. It perhaps has appreciated some. I'm not certain.

THE COURT: I think, Miss Woodhouse, we ought to take a rest and give our reporter a break here at this point. We will stand in recess 10 minutes.

MS. WOODHOUSE: Thank you, Your Honor.

(Proceedings recessed 10:42 a.m., reconvened 10:58 a.m.)

THE COURT: Please continue, Mrs. Woodhouse.

[76] MS. WOODHOUSE: Thank you, Your Honor.

Q. (BY MS. WOODHOUSE) Special Agent Young, when in 1990 – I believe we did not go through the significant cash expenditures. Could you please describe those for the Court?

A. Well, other than the land purchase I described in August of 1990, in April of 1990 Joe Libretti purchased a brand new 1990 Toyota vehicle from Burt Toyota in

Denver, Colorado. And he paid roughly 19,500 cash for that or wrote a check for it.

In May of that same year, just a month following, he purchased another pickup truck for $14,800 cash. Then the land was in August of 1990 for 20,000. And during which time he's also purchasing five firearms. I don't know the exact amount of firearm purchases he had during 1990. Maybe that's on there. Yes. He purchases $25,000 worth of firearms in 1990 as well.

Q. And you had conversations with Claudia Porter in which she indicated that she had seen large quantities of cash?

A. Correct.

Q. And can you tell us what they told you about that money?

A. Well, initially, she said that she assumed that it [77] was – she knew that he had a past and she felt, or wanted to believe, that he had left the drug trafficking behind him. But as time went on and the arguments grew on, she admitted to me that he had to have – in fact, she stated to me, "I know he was involved in it right up to the time he was arrested." Certainly, because of the activities that he had requested of her.

She also knew that he was still selling cocaine to Emily Coolidge, another one of his friends, because they would talk in codes on the telephone, and that Emily Coolidge was receiving packages of champagne from Joe Libretti. She had arguments with Joe Libretti – I am sorry. Let me back up. The champagne –

Q. Champagne sounds good.

A. Champagne was – I am sorry – I should have explained that champagne was Emily Coolidge's code word for shipping cocaine.

Q. How did Claudia know this had been established as a code word?

A. Because she saw it and read it in a letter. She figured this out herself and confronted Joe Libretti with it and he did not deny it.

Q. And those transactions were going on in 1990?

A. Late 1990 as well.

Q. Did she also tell you about the money that was taken [78] from Portland and that it was kept in a safe there in the hotel?

She told me that the cash had been secreted into a briefcase. She had discussions with Joe about that, why he needed to take so much cash. He tried his pat answer several times, "It's best if you don't know." She knew this, that they stayed at the downtown Portland Hilltop Hotel; that he had to utilize a safe, one of the hotel safes, to secrete the case for security purposes so the money wouldn't get stolen.

Q. Did he return with that cash?

A. She did not know, but she believed he did.

Q. Did – he did come back with the cash?

A. Some of it, yes.

Q. And did she give you any better indication about the approximate value or quantity of money that was involved there?

A. When she initially had talked about the cash in the briefcase, she said it was $100,000. Although she admitted that that was from his statements, not herself. She did not know those amounts.

Q. Now, following that trip which was in September of '90, and also following that exchange that occurred between Schlosser at Hardee's in Loveland and the defendant, then the – then Miss Porter saw the Marlboro [79] bag that was filled with cash?

A. Sometime between there and the trip that Joe Libretti took in early or mid-December where he'd taped the money to – attempted to tape the money to his body. She saw him take the red Marlboro bag, the red bag with Marlboro written on it, and pour that money out onto the bed, and she said it was large amounts of cash, bundles of cash, and he again told her that that was about $100,000.

Q. And at that time, what was her knowledge of his involvement in drug distribution?

A. She characterized her knowledge as believing that he had gotten out of the business and that this was just residual income.

Q. But it was drug income?

A. That's correct.

Q. Then in December there was the time when he was trying to – attempting to tape this money to his body?

A. Correct.

Q. And did she give you an indication of what quantity of money was involved in that episode?

A. No. I don't recall if she did give an amount.

Q. It was numerous bundles of cash?

A. Numerous bundles of cash wrapped up in newspaper.

Q. Then in 1991 the investigation began. Can you tell [80] the Court when that started?

A. Well, the investigation was initialized in the Lakewood, Colorado, area in late 1990 and culminated with search warrants on January 9 of 1991.

Q. Now, following search warrants starting in January of 1991, what efforts are you aware of that the defendant engaged in to conceal drug proceeds from the United States?

A. Well, his arrest was on December 4th and he was detained five days of that time.

Q. I'm talking about during the year of 1991, prior to his arrest.

A. Right. Just after his arrest – oh, you mean what he had done prior to his arrest to conceal the property?

Q. Safe-deposit boxes and another –

A. In fact, he rented a series of nine different safety deposit boxes. Overall from the time the conspiracy alleged in the initial indictment, he had, I believe it was, 27 – I will take a conservative number of 23 safe-deposit boxes in and around the Denver metro area, and had nine of them open at one time, as I recall.

Now, did – the codefendants said on many occasions when they were to purchase cocaine from him, that he

would take them to particular banks. One in particular was the Bank Western at Miller and Colfax, [81] the same one where he banked. Right across the street was another one, First Bank. Just up the street to the east was Wadsworth and Colfax was the Jefferson Bank and Trust.

Of course, I reviewed those entry records and he had been in and out of those safe-deposit boxes as many as well, sometimes three times on one Saturday. And from the life of one safe-deposit box, he was in there – he had it for a year and he was in and out of it, like, 39 times.

Q. Now, concerning money in 1991, that he concealed in a safety-deposit box, are you aware specifically of a safe-deposit box in Mount Prospect, Illinois?

A. I am.

Q. What are you aware of regarding that box?

A. I know that that box was opened on April 27th of 19 –

THE COURT: Now, which box was this?

THE WITNESS: This was box – this was at – at Country Side Bank at Mount Prospect, Illinois.

Now, we've recovered some records of airline flights detailing that Joe Libretti had flown from Green River, Rock Springs to Denver to Chicago on April 26th. It was a Friday.

THE COURT: 4-26-91?

[82] THE WITNESS: That's correct. On April 27th of '91, Saturday morning, he opened and entered a

safe-deposit box of Country Side Bank. And on the 28th of 1991, the day following that, he flew back to Wyoming.

The box, I searched in March or April. I believe it was April. Yes, it was April of 1992, and we were made aware of the box because Claudia Porter had given us the renewal slip. The annual rent on the box was due and that notice of rent due had been sent to Claudia Porter. Well, actually, it had been sent to Joe Libretti at Claudia Porter's address. She gave that to us. That is why we became aware of that box. We did, however, know he had made that flight out there.

Q. Were you also aware of some boxes in the Denver area which were apparently entered for the final time in July of 1991?

A. Yes. July of 1991 he had safe-deposit boxes at the First National Bank of Lakewood and that box was closed. He also had a box in – that may have been August. But in July of '91, July or August, he entered for the last time the bank safe-deposit box in Springville, Utah. That was the last time that one had been in.

Q. And Claudia Porter related to you that she'd accompanied him on that trip to open – at least to open [83] the account in Springville, Utah –

A. Yes.

Q. – or excuse me, the safe-deposit box?

A. That's correct. And that's the time he had the red Marlboro bag, as I recall, or he had taken that bag or the briefcase with him. And that's why she assumed that safe-deposit box was being used to conceal cash.

Q. But that box was entered for the final time in August or July of 1991, and you did search that box and found it to contain nothing?

A. It was empty, yes.

Q. Are there other activities during 1991 prior to the defendant's arrest which indicated a concealment of drug proceeds or transfer of drug proceeds?

A. Well, yes. We searched the safe-deposit box at the Country Side Bank and we found $28,060 wrapped in newspaper much the same way that Claudia Porter had described to us from December of '90, his trip to visit his brother in Michigan. That money was 28,000 – was wrapped in newspapers from the Lakewood, Colorado, area. The papers were dated January of 1991.

Q. Now, are you also aware of the defendant's gaining entrance into a safe-deposit box he held in Colorado after the search warrant was executed on January 9 of 1992?

[84] A. Yes. On January 9th, he flew, stating that he had an emergency; that there had been a death in his family.

Q. Who did he tell that to?

A. He told that to people at General Chemical that he worked at, that he had a death in the family. As I recall, this was a Wednesday. He hopped on a flight, flew directly to Denver, bank employees who I interviewed said that.

Q. Which bank is this?

A. This is at Bank Western at Miller and Colfax. They were – and I will have to back up and tell you a little bit about this in 1990. They knew Joe Libretti rather well at this time. In fact, in February of 1990, they had reported Joe Libretti's suspicious cash deposits to the IRS. They reported them to their headquarters in downtown Denver and then the headquarter's officers was tracking Mr. Libretti's cash deposits into his Bank Western account.

They would note that on weekends he would bring anywhere from two to $5,000 cash in. Nearly every weekend during this time period, this suspected time period, he would make cash deposits at the branch in what's known as the Westland Branch, the one at Miller and Colfax. In the same day in the afternoon, there would be another cash deposit at the Southwest [85] University Mall Branch. There were deposits over in the Aurora side, and the individual from Bank Western whom I interviewed showed me these records, and that's how they were tracking his activity. They thought that highly suspicious.

The tellers that we interviewed said he would come in and say he had been selling guns and he had a gun business and he led them to believe he was depositing these sums into those accounts. In fact, prior to this time, they had filled out what are known as cash transaction records on him for deposits exceeding $10,000.

One of the conversations that the teller had with the defendant at that time was Joe had asked her, "What are you doing?"

She said, "I have to fill out this form in any deposits over $10,000, and you have to identify yourself."

He fictitiously wrote on there, he wrote he worked at King Sooper sales, and he was not employed there at the time and the money went in. But from that time forward, she instructed him – these amounts are from $10,000, or otherwise suspicious – so from that time forward Joe Libretti did not make any deposits of $10,000, he made them for much less. But they were so [86] frequent, they began to file the cash transaction records in any event, because they felt they were suspicious.

Q. So on the date the safe-deposit box was opened on January 9, '91, did they take special note of that?

A. They did. They noticed that he arrived by cab. They said he was in a hurry. He came in, gave them authorization to enter the box, then he ran back outside of the bank and he got in the cab and he was driving around the block. He showed back up in about five minutes.

The bank teller's words were, "It looked like he thought he was being followed and he was trying to see if he was being followed. Then he came back into the bank." The locksmith arrived, drilled the box. The locksmith that I interviewed said he knew there was something in the box. By removing it, he felt it had weight in it, but he did not open it or see what it was. Joe Libretti closed out the box, took the contents from it. The box was empty when they left.

Q. Now, describe for the Court the activities that were engaged in by Ms. Porter following the arrest of Joe

Libretti in December of '91 with regard to his property and money.

A. Initially, the Wyochem Federal Credit Union [87] accounts, she received a power of attorney, first off so she could handle his financial affairs. She was instructed to close out the accounts from the Wyochem Federal Credit Union and transfer those monies into an account that didn't have his name on it. And that's when she told us she was putting it into their joint account and wanted to keep that account, but wanted just to have his name removed from it. The bank refused to do that. They said, "We can't just remove that. What you should do is just open up another account in your name." And so that's what she did. She opened up another account in her name only, and then deposited that cash into it.

Q. Now, stopping there, have you had a chance to analyze the records from that General Chem – Wyochem Credit Union account?

A. Yes, I have.

Q. And the deposits in that account came from what sources?

A. They came from checks, cash, and transfers.

Q. Can you tell us the amount of the deposits that occurred during the year of 1990 or '91?

A. In 1990 they were $75,000 cash funneled into that account or $75,000, of which approximately 28,000 was in cash. I think another 22,000 was in transfers and the [88] rest were by deposits of checks.

Q. And some of these checks were?

THE COURT: Are these checks for salary?

THE WITNESS: No. I didn't get each and every deposit item, but they were consistent with checks for salary because they came twice a month and they were for the same or reoccurring type amounts. I believe that's what they were, Judge.

Q. (BY MS. WOODHOUSE) Okay. And continue on with the instructions and the distribution of that account.

A. She was instructed to close that account out and then put it into her – get the account out of his name. Get the money away from him.

Now, initially, she didn't tell me this, but she did say later, as did Dee Smith tell me, that these monies were being transferred because Joe said they were going to take it from him. She was also instructed to get – with the power of attorney, to get a quit claim deed on the property.

Q. And that's the Lincoln County property?

A. On the Star Valley Ranch property. She was instructed and she received in the mail from the law office of Zunker and Sullivan a quit claim deed notarized and signed by Joe. She was to file that using her power of attorney and then transfer that property to [89] Joe, Sr.

Q. Or send the deed to Joe, Sr.?

A. Send the deed to him. She did. And she said she did as instructed. She was also instructed to go to the courthouse, utilizing the power of attorney again, and obtain a duplicate or replacement title.

Now in August of 1991 –

Q. Replacement title for what?

A. The trailer house. In August of 1991, we had seized the original titles of the vehicles and that trailer home, at 800 Wilderness Trail. She went in in December or January of – December of 1991.

MR. O'DONNELL: Excuse me again, Agent Young.

Your Honor, I'd like to object.

THE COURT: It is narrative.

MR. O'DONNELL: Absolutely. No foundation for what Agent Young is testifying to, no dates. If he's testifying to what he legitimately knows, what occurred and what she said –

THE COURT: Can you tell us when she told you this?

THE WITNESS: Well, my knowledge of this is a little confused because it's corroborated by my review of the record at the courthouse. But she told me this in her interviews of February or March of 1992.

[90] MR. O'DONNELL: In addition, Your Honor, to the foundation objection, this entire line of questioning is not rebuttal testimony to third party claims.

THE COURT: Oh, I think it's in rebuttal to the claim of Mr. – Dr. and Mrs. Libretti on the title to the Star Valley Ranch.

MR. O'DONNELL: May I have, so I don't waste your time, Your Honor, a continuing objection?

THE COURT: Surely. Go ahead.

Q. (BY MS. WOODHOUSE) You may continue on with your description of the information from Miss Porter.

A. Miss Porter told me that she was instructed to transfer the title from the mobile home to her name after having obtained a duplicate or lost title. She said she went to the courthouse and did that; that she signed an affidavit that the title had been lost or destroyed and then a new title was issued in the name of Joe Libretti. She then transferred that title to herself as Joe had instructed her, utilizing the power of attorney.

Q. Now, at the time that she signed this affidavit saying that it was lost or stolen, was she aware that the United States government had it and it was not in fact lost or stolen?

A. I don't know if she was aware of it at that time.

[91] THE COURT: Well, what you're telling us is that this Wyochem account was really his bank account, the only one he had at the time, and he was using this for his expenses?

THE WITNESS: Well, it was actually – the Wyochem Federal account, Your Honor, was not only his main checking account and savings account, he still had accounts open in Denver, Colorado.

THE COURT: Yeah. But this was his main account.

THE WITNESS: That's correct.

THE COURT: And you're saying that you think that the drug money was commingled with his own earnings in that account.

THE WITNESS: It had to have been, yes, sir.

THE COURT: Okay. Yes, sir. Go ahead.

MS. WOODHOUSE: Thank you, Your Honor.

Q. (BY MS. WOODHOUSE) And other – Miss Porter effected other transfers of funds and property for the defendant after he was arrested?

A. That's correct.

Q. And did she tell you her reason for affecting these transfers?

A. Eventually, she did tell me that her reason was Joe had told her that the government was going to take it [92] from him and it had to be moved out of his name. All of this stuff had to be moved from his name, which was exactly what she did.

Now, initially, when he asked her about signing the affidavit for the lost or stolen title, I am not sure she ever knew when she had it or not. Of course they would have had it on the returns, but had she read that, I don't know.

I told her we had these titles and why was she transferring these things into her name. She said it was strictly at Joe's instruction and it didn't have anything to do with gifts or having to maintain these things for him. At that time she told me it was because Joe had told her to get them out of his name.

MR. O'DONNELL: Again, Your Honor, I object. Miss Porter has filed a claim for two pieces of property. All their testimony is about a mobile home and other pieces of property. It's just not relevant.

THE COURT: It relates to what she did with respect to her power of attorney on – admittedly, there isn't a claim on the motor home, but on the Star Valley Ranch loss. So it's relevant.

Q. (BY MS. WOODHOUSE) Tell us about just exactly how it occurred that you found out about the ring that Miss Porter had been given by the defendant –

[93] A. Well –

Q. and when that happened.

A. I learned of the ring on or about August of 1991 after having conducted the search warrants at his house and storage lockers. We found the appraisal and the receipts for the ring. The appraisal was just shy of $4,000 for an – as I recall, it was a .85 carat diamond set and it was in a mount. And there was a picture of it taken in the appraisal. I questioned Claudia Porter about that.

Q. When was that?

A. This would have been in February or March of 1992. The actual date evades me now. There were many interviews there as we progressed. I asked her where the ring was and what she had done with it. She told me that she had taken the ring and she had hocked it and he had gotten money for it and spent the money.

Q. Hocked means pawned?

A. Pawned it, yes. I asked her who she pawned it to, where were they at? Let's get the pawn slips, let's back this – trace this down. And it was at that time he said she had the ring, she had lied to me; that she had the ring.

This interview took place at her restaurant. She removed the ring from her purse and gave it to me. [94] We counseled – we talked quite a bit about my belief that she was being deceptive and withholding much information. She was more forthcoming and, in fact, at this time she gave me the slip that indicated that he had – the box rent was coming due in Chicago and that she became more and more cooperative.

She stated that she knew this relationship with Joe was wrong. She wanted to remove herself from it all. She slid over all the property including the power of attorney, the titles to the mobile home. She told me that she had transferred, of course, the title – or the deed to the property had already been sent to Joe, Sr. She said she wanted nothing more to do with Joe Libretti and she hoped she was through with him.

I accepted – and I probably still to this day – that she cares very much for Joe and has a difficult time doing this.

Q. Now, with regard to the actual turning over the safe-deposit box keys, can you tell us how that occurred?

A. I asked her if she would – when I was leaving, if she had told us the entire truth about everything else. She said that there was some other things, and she said that she had some money that Joe had left at the house. I told her that I was en route back to Cheyenne at the [95] time.

I asked her to please explain that to Lieutenant Mecham, that he would show up later in the afternoon.

She subsequently turned over cash to Agent Mecham, the cash that was in the paint can that you heard testimony of earlier. But she – at this time, she still – she was in possession, however, of the three safety-deposit box keys, but she hadn't given those to us at that time either.

It wasn't until I received a call from Craig Truman's defense investigator, his criminal investigator, he called me at home in Cheyenne and said that he had interviewed Claudia Porter and Claudia had told him of some safe-deposit box keys; that he had discussed this with Mr. Truman and recollected back – let me back up a minute.

He didn't call Claudia, called me while he was there at the house, and I conversed with him after having received a call from Claudia. Said that the keys were there. I told Claudia I would send Mont over to pick up the keys. Again I was troubled that she hadn't provided this information – again, I expressed my dissatisfaction with Miss Porter over her having not revealed this to us earlier.

She said she had found the keys underneath the carpet. Once the dogs had pulled the carpet out of the [96] dog house, she found them stapled or up – on the floor of the dog house. They had been drug out. She had taken them and concealed them in the bottom of the plant. She removed the material and concealed them in the bottom of a plant and hid them until this was weighing on her, I guess, to the point she felt obligated to turn them over to us.

Q. Wasn't it until the point that she told the investigator for the defendant that she finally told you?

A. That's correct.

Q. Please outline for the Court the types of drugs that Mr. Libretti sold during the conspiracy and the amounts of money that he earned. You said earlier that it was probably at least one million dollars?

A. From the time that – well, just from the records that we seized from the first search in January of 1991, from all the accounts that he had, the amounts that we saw funneling through those accounts was over $800,000. And that was just for the time period – and that involved very few of the accounts.

Now, from 1981 to 1991 our best estimate of his drug trafficking is that he had profited in excess of a million dollars, and that was a conservative estimate after our discussion with you even recently.

[97] Q. What quantity of drugs was he selling?

A. Kilogram quantities of cocaine purchased from between 20 to $30,000, each cut, sold, distributed over the entire life of the conspiracy.

Now, not so much in the great amounts in the earlier years, but certainly as time went on.

Q. And total kilograms of cocaine that you believe –

A. Would be over 50 kilograms. We had an estimate of 76 kilograms from the codefendants. At one time we have reduced that conservatively to a 60 kilograms estimate.

Q. And a profit on each kilogram of?

A. I haven't calculated the specific kilograms.

Q. As far as narcotic profits, can you give us a summary of that?

A. The witnesses and the codefendants were not certain on the amounts of marijuana that had been sold. They saw amounts totaling what they believe to be 600 pounds at a time, and there was reportedly customers purchasing 200 pounds at a time, customers from back east.

Now, in their best estimates, he at no time would have gone through more than a ton of marijuana. And that was due in part because the product – this was in the earlier years, but the product was bulky, smelled, and that's the reason they shifted – Joe Libretti's organization shifted from marijuana to [98] cocaine was because of the bulkiness was such that it required storage lockers, it smelled, and the profits weren't as great as they were in cocaine sales.

Q. So your conservative estimate of the actual profits that the defendant earned between 1982 and 1991, is what?

A. A million dollars. In excess of a million dollars.

MS. WOODHOUSE: A moment, Your Honor?

THE COURT: Surely.

MS. WOODHOUSE: No further questions, Your Honor.

THE COURT: Cross-examination, Mr. O'Donnell?

THE COURT: Thank you, Your Honor.

CROSS-EXAMINATION

Q. (BY MR. O'DONNELL) It's true, Agent Young, that you don't claim Mr. and Mrs. Libretti, the parents of Joe Libretti, had any knowledge that anything they received was tainted with drug money?

A. Well, I believe that they had a knowledge that the land, certainly, that he had purchased now was suspect.

Q. Oh, all right. Then you tell us specifically, now, why you believe that to be true?

A. Well, I reviewed –

Q. What did Mr. or Mrs. Libretti tell you that gave you that indication?

[99] A. They told me that they had never given him any other money or any other concerns other than some, like, $2,000 for a cruise when he was married, those types of things.

Additionally, Mr. Libretti stated contrary to what I heard from Mrs. Libretti today, that he had never received the title or had any prior agreement with his son Joe that this land was for anything to do with reimbursement for attorneys' fees for his defense.

Q. What does that have to do with drug money?

A. Well –

Q. Why does that raise an inference of drug money in your mind, Agent Young?

A. No, no, no. Why does it raise a drug – if I were to receive – if my child were to sned [sic] me properties, GNMA certificates are all of a sudden appearing at my home, deeds to property are appearing at my home shortly after my son had been arrested for conspiring to distribute large quantities of drugs, I would be sure –

Q. You are just making an assumption, then, are you not?

A. If that is an assumption, yes.

Q. Let's limit it to what we know of the testimony. The testimony at the grand jury as you related it to His Honor is that Mr. Libretti said he didn't know his son [100] was going to send him the ranch.

A. That's correct.

Q. And you heard Mrs. Libretti say this morning that is exactly right, she did not know the ranch was coming from Joe as a partial repayment for what money had been sent to Joe, Jr., by his parents.

A. That is correct.

Q. What in that testimony, Agent Young, raises any inference of drug money?

A. None.

Q. Thank you. Now let's turn to Claudia Porter. She has made claim and you were here and you understand this to be true, do you not, for two pieces of property?

A. Yes.

Q. Those two pieces of property are $3300, approximately, in cash, and a diamond engagement ring, right?

A. That's correct. I thought it was $1300 however.

Q. You are correct. I believe – I think I misspoke. It's $1333.

A. Okay.

Q. I apologize. The ring, according to the testimony, was a gift to Miss Porter in approximately October of 1990?

A. That's correct.

[101] Q. The cash was a gift to Miss Porter in December of 1991?

A. That's incorrect.

Q. When was it?

A. She received the money in December of '91. That part's correct.

Q. And the testimony was it was a gift?

A. I heard her testimony today that she believed it to be a gift. Yes, I heard that.

Q. All right. Now, it was in April of 1992, according to your testimony, when Miss Porter said to you that she – let me find the quote here. Was foolish not to have known that Joe was involved in narcotics?

A. It was a save face statement on her part. Yes, I believe that's true.

Q. And that was in April of 1992?

A. Perhaps March as well.

Q. All right. After both of those transactions had occurred?

A. That's correct.

Q. Why don't you tell us what you know about the source of the funds that the ring was purchased with?

A. I don't know how that particular ring was purchased. I don't recall the – as I recall, it was purchased from a – the stone itself was purchased from a New York [102] jewelry or diamond broker. I don't recall how those particular funds were transferred.

Q. All right. You don't know which funds those were?

A. I don't know. The man had at that time many bank accounts and it was very difficult to follow.

Q. You testified for something like an hour on the statement related to you by a number of different witnesses and things that you learned from your own investigation of Joe Libretti regarding drug proceeds.

A. That's correct, yes.

Q. And you have opined to Judge Brimmer that Joe Libretti earned in excess of one million dollars from his drug business over that ten year period?

A. That would be my conservative estimate, yes.

Q. From what documents do you draw that conclusion?

A. Well, Joe Libretti's total earned income during this whole time.

Q. No. From what documents do you draw that conclusion?

A. From his bank records. From all the monies that is funneled through those bank records.

Q. Do you have those bank records?

A. We did, certainly.

Q. Do you still?

A. I don't know – yes. I think either we do or the [103] IRS does. You bet. Of course, I said I was cooperatively engaged in this investigation.

Q. And when I say "you," please understand that to mean the law enforcement people who were investigating this case.

A. Yes. Yes.

Q. What other records were used in your analysis – and I am, again, speaking of you collectively – to arrive at conclusions that Joe Libretti's drug income was in excess of a million dollars?

A. Those records that I told you about. His bank records, his expenditure records, his travel records, the statements from his defendants, the codefendants.

Now, again, I can't tell you about the statements if you want to know just about records.

Q. I just want you to right now just identify and not particularize records but classes of records, if you would.

A. Credit card statements, telephone bills, American Express credit cards, AT&T credit cards, bank accounts from, I think, 13 different banks in the Denver metropolitan area. Of course, the statement – all of his gun business records from those distributors that we were able to determine a course that the income wasn't coming from the sale of the firearms.

[104] Q. Anything else?

A. Well, no. Other records, no.

Q. That's the extent of the records that you have relied upon?

A. I would hate to tell you that is the only thing, because I don't recall. But as I recall now, yes, sir.

Q. And let me rephrase this in a slightly different way because I am not trying to pin you down to identifying each one as you sit here. It is true that your opinion comes in large part from the records you have reviewed?

A. That is correct.

Q. Did you have access to Mr. Libretti's tax returns, tax information?

A. Yes.

Q. And did you have records of the property transactions that might affect the land or the mobile home, et cetera?

A. Yes.

Q. Was there any group or class of records which you did not have access to that you needed in your investigation in your view?

A. I don't recall any right now.

Q. You were aware, of course, that Mr. Libretti was employed rather consistently from 1984, 1985 on?

A. Yes.

[105] Q. And that he, of course, received pay from his employment?

A. Yes.

Q. And you are aware, I trust, from review of bank accounts that he deposited his pay into his bank accounts?

A. Yes. Checks, yes.

Q. In fact, when you analyzed Judge Brimmer's question about commingled, when you refer to commingling, it was part drug transactions and some legitimate?

A. Some of those checks, yes.

Q. And some of that legitimate income would also have come from Mr. Libretti's firearm business?

A. Perhaps yes.

Q. You are aware from the tax returns, aren't you, that he earned income and reported income on that business?

A. Yes.

Q. And that would be money also deposited into these accounts?

A. Yes.

MR. O'DONNELL: All right. Your Honor, at this time that's all the questions I have. Because of the nature of this examination, if there is more later required, if the scope of this hearing extends, I reserve the right to recall Mr. Young.

THE COURT: Thank you, Mr. Young. You may step down.

MS. WOODHOUSE: I have a few additional questions, Your Honor.

THE COURT: All right. Go ahead.

REDIRECT EXAMINATION

Q. (BY MS. WOODHOUSE) Special Agent Young, are you aware that Dr. Libretti disclaimed any interest in this property during the time that he was present for his testimony in January of 1992?

A. Yes, I am.

Q. And that he subsequently mailed in the actual deed, the original deed, to the United States?

A. That's correct.

Q. And by doing so, he was further indicating that he had no interest in this property whatsoever?

A. That's correct.

Q. You're also aware that Claudia Porter disclaimed her interest in the ring by turning it over to you when she did in either March or April of 1992?

A. I felt that she did. She said she wanted nothing further to do with it.

Q. And she willingly told you that the money, the $1333 was not hers and that it was just the proceeds from that Wyochem Credit Union that she still had?

[107] A. That's correct. She indicated, again, per instructions from Joseph, that she had taken $8,000 and had wired it to Dee Smith in Chicago, Illinois, at Legal Research.

Q. Now, based upon your knowledge of the income that defendant had during the time that he was setting up his gun business, what is the source of funds that he used to obtain these firearms?

A. The sale of cocaine and marijuana.

Q. And do you know – I know that there's been an extensive study done on the actual profit that he made in his gun business. Are you aware of that figure?

A. Yes, I am.

Q. What is it?

A. From the time that he had his license to the time that he was arrested, he grossed no more than 7,500 from any sales of firearms.

Q. Grossed?

A. That's absent any of his expenses – postage, phone calls. That's absent that.

MS. WOODHOUSE: Nothing further, Your Honor.

MR. O'DONNELL: Your Honor, I do request the right to recross now on new matters raised.

THE COURT: Sure. You may.

[108] RECROSS-EXAMINATION

Q. (BY MR. O'DONNELL) You certainly don't mean to portray to His Honor that Miss Porter and Mrs. Libretti are not claiming the things that they say they are claiming today, are you?

A. I guess I don't understand your question.

Q. Well, I understood you to answer a question of Miss Woodhouse's that the Librettis disclaimed any interest in the Star Valley Ranch.

A. Mr. Libretti certainly indicated to us –

Q. That certain indication has been changed today, hasn't it?

A. She says otherwise.

Q. And today, as you heard His Honor say, is the day for claims to be made?

A. I did hear that, yes.

Q. And you heard a claim made?

A. I did.

Q. All right. Let's talk about gross revenues from the firearms business, Agent Young.

A. Yes.

Q. You say the maximum gross was $7500 from the firearms business from Mr. Libretti, total?

A. That's correct.

Q. From where do you get that figure?

[109] A. From the sales – every firearm that Joe Libretti sold, nearly every firearm. I didn't participate in every interview. The people who were interviewed – the forms have their names and address – they were interviewed. They detailed how much they spent. These amounts were compared against his invoices coming in, as well as his sales. He did have some sales to some government agencies. These were job lists and in many cases these guns he received, guns on trade from some police departments at prices that several individuals in the business told me were far greater than they would have paid, he paid greater, are greater.

MR. O'DONNELL: Your Honor, may I approach?

THE COURT: Sure.

Q. (BY MR. O'DONNELL) Let's do just one thing here, Agent Young. I am handing you one of the few records Joe Libretti possesses currently. It's a copy of his 1989 tax return, and I refer you to Schedule C – C1 of that tax return. Have you seen this page before?

A. I may have seen this page before, I don't recall specifically.

Q. Do you recognize what this page reports to the IRS? Let me ask it this way: Does this page report income from Mr. Libretti's; firearm business?

A. Yes, it does.

[110] Q. And it reports gross receipts in 1989 in excess of $56,000, doesn't it?

A. That's what it reports.

Q. Okay. Thank you. And I'm sure you would agree with me that each of the other years that Mr. Libretti was in business he reported gross receipts from his firearm business on his IRS tax forms, would you not?

A. I would not agree that – these particular forms that you just showed me right there, having interviewed the preparer of them, I know that they were filed after Joe Libretti knew that – we were investigating him, and that he had to show higher gross – we even have him claiming some gambling wins in there. He knows that the government is looking at him, but I don't believe the accuracy, but I will say that is what he filed. And he says he's willing to –

Q. He says he's willing to pay taxes on the gross receipts of $56,000?

A. He shows a net profit of less than $5,000.

THE COURT: What time was this '89 return filed?

THE WITNESS: I don't believe the '89 return was filed until '91.

Q. (BY MR. O'DONNELL) But your statement that there was a total of $7500 in gross receipts is not completely [111] accurate, is it?

A. Again, in gross receipts, I'm talking about that's the most money he could have made in the sale of firearms. Profit – profit, that is what I am trying to tell –

Q. Gross profit?

A. Gross profit. That is different than gross receipts. I am sorry. I am sorry. The most money he could have

profited from his business from the inception to the time he was arrested was $7500 gross.

Q. And upon what records do you rely in reaching that conclusion?

A. Interviews, the bank records showing the deposits of the purchaser's checks being deposited into his accounts compared to the invoices of the gun companies who sold him the guns.

Q. All right. And we are again talking about classes of records that you have available to you and are still available to you?

A. As far as I know, yes, sir.

MR. O'DONNELL: That is all I have.

THE COURT: Anything further?

MS. WOODHOUSE: Nothing further, Your Honor.

THE COURT: Thank you.

Call your next witness.

[112] MS. WOODHOUSE: Your Honor, at this time I guess I'm – I need to find out for sure if the claims by the Librettis concerning the cashier's checks and the GNMA certificates, the Seattle mortgage, Barclay's American Mortgage –

THE COURT: So far, there isn't a third party claim concerning those.

MS. WOODHOUSE: They were in a letter, Your Honor.

THE COURT: Joseph Libretti, Jr., has filed some sort of motions that apparently claim them.

MS. WOODHOUSE: Okay.

THE COURT: And we'll hear from him at the appropriate time, but I'm satisfied that those are drug money.

MS. WOODHOUSE: Thank you, Your Honor. If that third party claim has been waived.

THE COURT: Oh, yeah. Yeah. If they're – if those people aren't here today, they've waived it. And the Librettis, Dr. and Mrs., are claiming only the three items that they've spoken to, the two savings and loan association accounts and the lot in the Star Valley Ranch.

MS. WOODHOUSE: Your Honor, I would like to introduce the transcript of the grand jury testimony of [113] Dr. Libretti concerning the transfer of the Lincoln County property, I guess.

THE COURT: Any objection?

MR. O'DONNELL: You are introducing the grand jury testimony?

MS. WOODHOUSE: Yes.

MR. O'DONNELL: For what purpose?

MS. WOODHOUSE: Because it is his statement about the property at the time he was questioned under oath.

Your Honor, I would ask to substitute a copy. I have only the original there today, but we would like to mark that as Government's Exhibit No. 1.

THE COURT: It may be received.

(Government's Exhibit No. 1

received in evidence.)

MS. WOODHOUSE: And with that, we'll rest, Your Honor.

THE COURT: All right. Mr. O'Donnell?

THE COURT: Your Honor, in light of the response to the third party claims, I don't intend to produce any evidence. Now, there was, as I understood from your forfeiture order, the opportunity for Mr. Libretti to be heard independently.

THE COURT: I am going to hear him on the [114] various motions and claims that he's filed. But right now we're hearing the third party claims.

MR. O'DONNELL: On just the third party claims, Your Honor, we have no evidence to produce.

THE COURT: All right. Mrs. Libretti, I need to ask you this question: What was the amount that you and the doctor advanced to George Zunker for the attorney fees? You don't need to know the exact amount; do you know the approximate amount?

MRS. LIBRETTI: I believe I had forgotten about that. I believe it was about $15,000.

THE COURT: 15,000.

MRS. LIBRETTI: But like I say, I don't write the checks.

THE COURT: All right. Now, did you have anything else that you wanted to present?

MRS. LIBRETTI: Well, I'm a little confused about who is saying that we disclaimed the land, because we never asked for it.

THE COURT: Yes. Yes. I understand that.

MRS. LIBRETTI: The money that we gave to the lawyers to help our son was given out of love. We never asked for anything in return and this was just something that I think Joe wanted to do.

THE COURT: Okay. I think understand.

[115] Miss Porter, did you have anything further that you wanted to present?

MS. PORTER: No, Your Honor.

MRS. LIBRETTI: My next thing was when he was arrested – you keep talking about drug money. When he was arrested, we had no idea what he was arrested for and we knew he had Lakewood Firearms. We thought this had something to do with firearms. We had no idea about drugs. So, I just want you to know that.

THE COURT: All right. I'll take this matter under advisement. I haven't read Dr. Libretti's deposition yet, so that will be necessary to review before I can make a decision.

At this time, then, Mr. O'Donnell, you may proceed on Mr. Libretti's various motions.

MR. O'DONNELL: Thank you, Your Honor. To advise you on how I anticipate approaching this, may I have just your indulgence for a moment here.

Mr. Libretti, as you are aware, has filed a number of pro se motions not over my signature.

THE COURT: I understand, but you are his attorney today and you are presenting them and you are in charge of the presentation. And I'll hear whatever you and he wish to offer. Mr. Libretti isn't going to take the time of the Court however and waste its time [116] rambling on. I expect a rifle shot presentation on these matters of the salient features.

MR. O'DONNELL: All right. Your Honor, I can give you a rifle shot presentation of the guts of this case in about three minutes. I will do that right now.

THE COURT: That's about all we have, until noon.

MR. O'DONNELL: To load the chamber and pull the trigger, Your Honor, the United States has precluded Joe Libretti from meeting his burden of proof here today by its actions. This Court has denied Mr. Libretti the right to subpoena witnesses and documents to this hearing, and the United States government has refused to voluntarily provide those documents it has in its possession, which would enable Mr. Libretti to meet his burden of proof today that certain property within your forfeiture order is not properly forfeitable under the law.

THE COURT: Well, now, tell me just exactly what witnesses were desired? The motion was to have a certain number of subpoenas issued at government expense.

MR. O'DONNELL: Ten subpoenas in nine different states, I believe.

THE COURT: And it didn't say for whom they [117] were.

MR. O'DONNELL: That's correct, Your Honor.

THE COURT: And thus I couldn't tell that they were needed and indeed I'm still not sure. So you must tell me who you think would have been subpoenaed and what they would have said.

MR. O'DONNELL: I'd be happy to, Your Honor, and the answer to that is actually a blended answer, because the information and documents that were sought by subpoena, as we learned in today's hearing, are already in the possession of the United States government. And I directed and hand delivered a letter to Assistant United States Attorney Woodhouse on March 12 of this year identifying 12 specific categories of records to be produced for Mr. Libretti to prepare for this hearing and to use at this hearing.

Your Honor, this is the material that we would have sought by subpoena. What I would like to do for purposes of the record is append a copy of this letter as Mr. Libretti's Exhibit C to the record and provide you a copy so that you may see the identified categories of records.

THE COURT: Defendant's Exhibit C may be marked and admitted.

[118] (Defendant's Exhibit C marked

and received in evidence.)

MR. O'DONNELL: The purpose behind seeking access to these records, Your Honor, through either the subpoena route or through the voluntary production of

them by the United States, was to allow Mr. Libretti and myself to make an adequate presentation to you that the amount of drug proceeds in its maximum figure could be determined to be less than the value of the property which has been forfeited by this Court's order.

Assuming for the moment that we could prove that, because we do not have those records, that would mean, Your Honor, that parts of that forfeiture order would have to be amended because property would have been and is forfeited.

THE COURT: What I'm really interested in, there is a serious question as to Mr. Libretti's standing to make claims to this property.

MR. O'DONNELL: I agree, Your Honor.

THE COURT: The statute under which this proceeding is held refers to the claims of third parties.

MR. O'DONNELL: It does, Your Honor.

THE COURT: And where he's actually made the claims, not only for himself, but on behalf of his creditors and various people, there Miss Woodhouse in a [119] prehearing objected to standing, and I presume she will again. So we might as well face that issue head on.

MR. O'DONNELL: Certainly, Your Honor, I am happy to address that and that is a ticklish issue.

Mr. Libretti, under the law, does not have a standing to assert claims on behalf of third parties. As I understood your order, Your Honor, that was entitled just "Order" that set the hearing and the parameters of the hearing. Two things were to occur today, one was that

third party claims would be heard; and, two, that Mr. Libretti would be heard. And there was no explanation in the order on how he would be heard. I took that to mean that if there was something wrong with this Court's order, this would be the opportune time to bring it to Your Honor's attention to correct it now so we don't end up back here on a remand to correct something we do not have now. We cannot do that, Your Honor, because we do not have the records to do it with.

THE COURT: All right.

MR. O'DONNELL: That's the rifle shot of the case, Your Honor.

THE COURT: All right. Well, there is more to it than that. I think we'll have to take up these motions one by one and well do that after lunch.

[120] And do you have my calendar? All right. I am going to adjourn this hearing until 2:30. And I'm going to try to get all the other things that were supposed to be done during the afternoon done before then so that we can finish this hearing up.

MR. O'DONNELL: Thank you, Judge.

THE COURT: Estoral was set at 3 o'clock and you'll have to have him here at 2:15. And Ramirez is 2 o'clock. We'll leave it. And Yearout we will leave at 1:30. So that ought to be okay.

MR. O'DONNELL: 2:30, Your Honor?

THE COURT: All right, at 2:30. Now one other thing. Mrs. Libretti, I have your letter requesting the right to visit your son, and I conferred with the marshal on this

matter yesterday, and I understand that as soon as you got in town you got a chance to see him yesterday afternoon sometime after 3:00. And the marshal says that he will be glad to let you visit with your son, Joe, this afternoon while Joe is here in this building. So you can visit him here.

Now, as to your request to visit him tomorrow, it's Saturday, and we don't have a lot to say about that. That's up to the sheriff. And I understand that Bill Long was nice to you, as I'm glad to hear he was, and I sort of think that he'll let you visit tomorrow, [121] too. But you're probably on your own.

MRS. LIBRETTI: I was told I could for an hour today between 1:30 and 3:30 and that was it.

THE COURT: Now it's going to work out just perfect with our schedule.

MR. O'DONNELL: In the building right here.

THE COURT: Right here.

MR. O'DONNELL: And no weekend, apparently.

THE COURT: They said no weekend.

MR. O'DONNELL: I will be glad to assist with Mrs. Libretti in talking with Dr. Long.

THE COURT: See what you can do, Mike.

MRS. LIBRETTI: Thank you, Judge.

THE COURT: We will stand in recess in this matter until 2:30.

(Proceedings recessed 12:30 p.m.,

reconvened 2:40 p.m.)

THE COURT: Good afternoon, ladies and gentlemen. With regard to argument on these matters, would you rather argue it now, the third party claims, or at the end of the hearing on Mr. Libretti's motions?

MS. WOODHOUSE: Actually, we're prepared to go at any point, whatever the Court's pleasure is.

THE COURT: Let's go through the motions first then.

[122] I think I'll take them in the order in which they are filed, and the first motion that I have is a Motion and Petition to Amend the Order of Criminal Forfeiture Under Authority of Title 21 U.S.C. Section 853(n) (6)(A), and it's a motion that Joseph Libretti, Jr., filed on behalf of his father, which is signed by his father, but obviously he prepared it.

Did you wish to speak to this?

MR. O'DONNELL: Your Honor as I noted to you just before we broke for lunch, these motions have all been filed pro se, in fact one of these motions accuses me of ineffectiveness in representation. I find myself at a particular disadvantage.

THE COURT: Well, let Mr. Libretti speak briefly to each.

MR. O'DONNELL: All right, Judge.

THE COURT: Come forward and speak to it, Mr. Libretti.

MR. LIBRETTI: What is the title?

THE COURT: This is the first one you filed. It is the first one that has *United States* versus *Joseph Libretti. Jr., and Joseph Libretti, Sr., Third party claimant, pro se.*

MR. O'DONNELL: Your Honor, does that have a date stamp on it, the one you are looking at?

[123] THE COURT: It was filed January 19th.

MR. LIBRETTI: Who signed it?

THE COURT: Well, your father's signature, apparently, is there. There is an affidavit by you that is signed.

MR. LIBRETTI: So my father filed it?

THE COURT: I think it's obviously on your typewriter. I think that you filed it.

MR. O'DONNELL: Your Honor, that is not a motion that I have. I'm not aware of that one.

THE COURT: Well, do you want to speak to this?

MR. LIBRETTI: Sure. I'd be happy to.

THE COURT: It pertains to the claim of your father to the deed to the Star Valley Ranch lot.

MR. LIBRETTI: Oh, okay. Sure. Okay, as far as that goes, I want –

THE COURT: Now, tell me this: Are you going to testify in connection with this?

MR. LIBRETTI: Yes.

THE COURT: Well, then, the clerk will please place the defendant under oath.

(Defendant sworn.)

JOSEPH V. LIBRETTI, JR.,

called for examination in his own behalf, being first duly sworn under oath, testified as follows:

[124] MR. LIBRETTI: Yes. I wanted to show some tax returns and some W-2 forms that I have with me showing that I earned an amount of income more than ample to –

EXAMINATION

Q. (BY THE COURT) Well, you can just tell me about them.

A. Okay, if you will take my word for it. In 1989 my income from General Chemical alone was $48,775.

Q. Now, how was that paid to you?

A. In the form of a check.

Q. Well, you got a regular salary check that wasn't wired to the credit union?

A. No. That wasn't a direct deposit, no.

Q. All right. Then what did you do with it?

A. I would deposit the checks in one of three accounts at one of two banks.

Q. Where were they?

A. Well, one bank was Bank Western in Lakewood, Colorado.

Q. Great Western?

A. Bank Western. And the other two accounts consisted of a savings account and a checking account at the Wyochem Credit Union.

Q. All right. Now, which was your main account, your personal account? Was that the checking account at [125] Wyochem?

A. I would have to say that I made the majority of my deposits in the savings account at Wyochem.

Q. All right. Go ahead.

A. Okay. In addition, in 1989 the company supplied me with other fringe benefits that allowed me to save all of my earnings, mostly. They paid for the condominium that I lived in for the first two months. I was working up there full-time in September and October. They paid for all my food. They paid the phone bills for that property and they paid me to fly to Colorado every week. They paid for that.

So when Claudia Porter says she didn't know about any 57 plane trips to Colorado, it's because probably 50 of them occurred before we got our first date because the company was paying for all that.

Q. I see. Why did they do that?

A. In 1989.

Q. No. Why?

A. You know, it's like the company gave me $3,000 to buy rugs and drapes. Why did they do it? I don't know, but I didn't turn it down.

Q. Okay. Go ahead.

A. Okay. In 1991 I earned almost $53,000 in salary working at General Chemical and I have the W-2 form for [126] that.

Q. And your position was auditor or were you chief auditor?

A. Well, my title was accounting supervisor.

Q. I see, accounting supervisor.

A. Yeah. I reported to the controller.

Q. Now, does that mean you were a supervisor of accounts or does it mean that you were the supervisor of the accounting department?

A. The controller supervises the accounting department.

Q. I see.

A. I was in charge of the mine. We had a mine and a surface operation, and I did all the accounting for the mine, and I did all the payroll and other things like that. But I wasn't in charge of the accounting department. I did have someone above me.

Q. Right. All right. Go ahead.

A. And my point is that I don't think that we should proceed on the assumption that all these properties are drug proceeds, because they aren't.

Q. Well, was there a commingling of drug money with salary money in your Wyochem account?

A. Well, I can assure you, despite what's been testified to today, that there were no cash deposits in any Wyochem account in 1991.

[127] Q. Were no cash deposits in –

A. In 1991.

Q. Cash deposits would be drug money?

A. Not necessarily, no.

Q. But probably?

A. Well, I dispute that, too.

Q. Oh, now, I wasn't born yesterday.

A. Well, Your Honor, I wanted to subpoena some people today to have them testify that they were involved in other enterprises with me.

Q. All right. Well, let's go ahead. So there were some cash deposits in the Wyochem account?

A. There were in 1989 and 1990.

Q. But not in –

A. '91.

Q. – '91. Well, what money did you use to purchase the Star Valley lot?

A. Well, I bought that in '90, so I'm not going to dispute that some tainted funds were deposited in that account. But what I am going to – and what I would like

to show, if the government will be kind enough to provide me with my bank record which they took, which they haven't, that I probably didn't use any illegal money for that land. But I don't have those records.

MS. WOODHOUSE: Your Honor, if I may, all of [128] the bank records were provided during the course of the criminal trial to Mr. Truman. Every time we got records from subpoenas issued, we turned them over to him. There are copies. Boxes and boxes of documents were provided.

THE COURT: Of course, he's been excused from the case.

MR. LIBRETTI: Exactly.

THE COURT: And I presume he has kept his files and Mr. Libretti hasn't had access to them.

MR. O'DONNELL: That is exactly correct, Your Honor.

THE COURT: Well, we'll go ahead and do the best we can today.

MR. LIBRETTI: Okay.

Q. (BY THE COURT) Tell me what your recollections are with regard to where the origin of the monies was that paid for the lot. Did you pay for the lot in cash?

A. Well, everyone keeps saying cash. You mean did I walk in with a briefcase full of money? No. I did what most people do. I wrote a check.

Q. For 20,000 – 19,000 purchase price?

A. Nineteen two. But I'm guessing.

Q. And you wrote a check on what bank?

A. Wyochem.

[129] Q. All right. Well, what percentage of funds in Wyochem do you think were tainted and what percentage were not?

A. I have to say that a small, but significant, percent were tainted.

Q. What do you call that? Ten percent?

A. That's what I'm thinking, yeah.

Q. Um-hum.

A. Less than 20.

Q. All right. Go ahead, Mr. Libretti.

A. Okay. May I use that chart and a marker and give a presentation about my interpretation of the case?

Q. I haven't looked at the chart, but I'll be glad – oh, you meant the paper.

A. Yes.

Q. Oh, sure.

MS. WOODHOUSE: Your Honor, the defendant has no standing here to allege a third party interest in any of these properties. He hasn't challenged the actual forfeiture order as he should have by an appeal to the Tenth Circuit.

THE COURT: We'll still give him an opportunity to speak and be heard.

A. How about a marker? Okay. To begin with, I would like to provide examples of the three accounting methods [130] described in the Banco Cafetero Panama case. Assume the account has the following activity, starting with a zero balance. I'm supposed to make it clear that this applies to all the motions.

Q. All right.

A. First column will be deposits and withdrawals, second column will be the balance, and third column will be the amount subject to seizure.

Starting with a zero balance, $10,000 of legitimate wages is deposited in the bank account. A few weeks later $10,000 of proceeds derived from a violation of Title 21 United States Code Chapter 13 are deposited in the same account.

Q. That would be tainted.

A. Yes.

Q. Okay.

A. That is subject to seizure. Okay. Two weeks later, $10,000 of legitimate earnings are deposited in the account. Okay. The account now maintains a balance of $30,000. Of that $30,000, one third or $10,000 is illegal proceeds.

At this point the account holder writes a check on the account for the purchase of 18 machine guns at a total cost of $10,000. Okay.

The first method, the lowest intermediate [131] balance method has been described as the drugs in, last out

rule. Under this rule the tainted $10,000 remains balance in the account until the time when the account falls below this amount. As long as the account balance remains above $10,000, all deposits and withdrawals are immune from seizure. It is the account that if considered retraceable, held proceeds of $10,000.

Q. Incidentally, I am going to take from the court file – I'll hand you what appears to be your Exhibit A called "Account Activity," which is a photocopy of your Wyochem account.

A. Therefore, the 18 machine guns are purchased for 10,000, are immune from seizure. At this point another 18 machine guns are purchased for $10,000.

Q. So by your theory, they'd be tainted.

A. Not under the lowest intermediate balance theory, because the account still maintains a $10,000 balance. Thus it is as long as the account maintains $10,000 you're just –

Q. You're going on a FIFO theory, first in, first out.

A. But this theory, the lowest intermediate balance is drugs in, last out Banco Cafetero Panama case gave three different ways that money can be traced for an account –

Q. So, you're saying that the –

[132] A. under this theory.

Q. The Court should use a theory of the lowest –

A. I'm not saying they should use any theory, but I would like to know which one they are using so I can

show you that you can't say everything that I have is drug money. And that's what you're trying to do. You know, I've made almost $120,000 from General Chemical alone, yet everyone wants to ignore that. And that's not proceeds.

Q. Well, the testimony I have before me says that over this period of time that you were in the drug business, you made a million dollars.

A. I made $70,000, Your Honor, and I would like to see some evidence to the – it never happened.

Q. Go ahead.

A. See, I was going to subpoena these codefendants today, and they were going to testify what they sold it to me for, and the other ones were going to testify what they bought it from me for and you'd say my profit margin was not quite that generalized.

MR. O'DONNELL: Your Honor, if I might be able to aid under the FIFO and in this intermedial balance theory, all of those theories contemplate that nontainted properties is nonforfeitable, and I think that where Mr. Libretti's argument is heading.

[133] THE COURT: Yeah, I do too. He hasn't said it yet.

THE WITNESS: Well, I was going to do an exhibit. I was going to continue with this, if you'd like me to.

Q. (BY THE COURT) Do it quickly.

A. Well, it's not quick. That's what I'm telling you. It's going to take some time.

Q. We've got to finish tonight.

A. Okay. Okay. Like I said, another 18 machine guns are purchased for $10,000 and those are immune from seizure. It is the traceable proceeds from the extent of $10,000 that are subject to seizure.

Now, another nine machine guns are purchased for $5,000, so our account balance now dips below our $10,000 level. So at this point what is subject to seizure is that – is nine machine guns and the account for $5,000. That doesn't mean they can take the other 20 under this theory. Okay.

Now, $7,000 of legitimate earnings are deposited again. Okay. Now the account has a $12,000 balance. Okay. The traceable proceed subject to seizure still only includes 5,000 from the account and nine machine guns because the new lowest intermediate balance in the account is $5,000. All deposits and [134] withdrawals in this account are immune from seizure as long as the account balance is maintained at or above $5,000.

The account will always have some tainted funds in it until some time the withdrawal knocks the account balance down to zero. Only at this point would the account totally be clean. The tainted money would be last out hence the name is drugs in, last out.

The second method is the averaging method. Using the account activity from the previous example –

MR. O'DONNELL: Your Honor, may we mark and have this document admitted as Exhibit D?

THE COURT: Yes, you may.

(Defendant's Exhibit D marked and received in evidence.)

THE WITNESS: Using the account activity from the previous example, we have three $10,000 deposits of which one is tainted; one third is traceable proceeds subject to seizure. As before, the check is written against the account for the purchase of 18 machine guns for $10,000. Under the averaging rule, a prorata share of each withdrawal is tainted. Since one third of the account was illegal proceeds at the time of purchase, one third of every purchase is subject to seizure in addition to one third of the account.

[135] So, since 18 machine guns were bought at this point, six machines guns are subject to seizure, one third times 18 and one third of the $20,000 in the account is subject to seizure, approximately 6,000 – $6,666.67.

Any deposits into this account would decrease the percentage of tainted funds in the account. But the dollar amount of tainted funds would still be one third of $20,000 or $6,666.67.

If another $10,000 check is written against the account for the purchase of 18 machine guns, bringing the account balance down to 10,000 again, six of these machine guns are subject to seizure, one third of the purchase, and one third of the account balance or $3,333 is subject to seizure.

And the last method is – doesn't really have a name, it's just known as drugs in, first out. And under this method, the first purchase would be the first tainted money out of the account. And thus the first purchase of

ten machine guns – of 18 machine guns for $10,000 would be subject to seizure while the rest of the account is immune.

Q. (BY THE COURT) Well, the difficulty with – that I have, yours is a nice theory, but if you look at that account, you can't tell a thing by it except that I do [136] know that there is tainted money in there.

A. Right. We know there is 10,000.

Q. And the statute reads that all proceeds traceable to such an exchange for controlled substances are forfeitable, so at this point, I can trace that to that account. Tell me why it isn't forfeitable.

A. Because only $10,000 is proceeds. $30,000 is not proceeds.

MR. O'DONNELL: There is case law to support that proposition as well, Your Honor. The case is *United States* against *One 1980 Rolls Royce*, 905 Fed. 2d, page 89, Fifth Circuit case, in 1990 which essentially says, Your Honor, that you can avoid forfeiture to the extent of legitimate funds used or found.

THE COURT: Yeah. I think that's true.

MR. O'DONNELL: So in Mr. Libretti's example, whichever calculation method is used, there is nontainted funds in the account that are not properly subject to seizure or forfeiture under the statute.

Q. (BY THE COURT) All right. Well, go ahead.

A. Okay. Going to give you a little example from this account about how possibly an error was made. Okay. I'm looking at the 1991 savings account.

THE COURT: This may be marked Exhibit C.

MR. O'DONNELL: I think we,re to E, Your Honor.

[137] THE COURT: Are we? All right.

(Defendant's Exhibit E marked for identification.)

THE WITNESS: On May 7, we have a balance of $6,365 it appears to me. This is 1991 savings. Okay. On May 14th a deposit is made. It appears to be a General Chemical check. From the amount, it looks like 15,564. The balance is now 21,729.

There is another deposit on May 15th which happens to be the day we used to get paid there of $2,857 and our balance is 24,587.

On May 17th there is $175 deposit and our balance is 24,762.

May 20th a deposit looks like $94, leaving a balance of 24,856, rounding out – and then on May 20. And then there is a – May 20th there is a withdrawal. Looks like some firearms were purchased for $12,588, bringing our account balance down to 12,267. Now the government claims that this is all forfeitable, this whole 12,588 from there. Careful examination of these bank records, this is all drug money. But even these two deposits appear to be General Chemical deposits.

So even if all this $6,365 was dirty money, which it wasn't, and even if this $175 was and this $94 is, that's not even $7,000. But they are taking the [138] whole 12,588. Oh, that's drug proceeds, you know.

And, you know, even simple arithmetic proves that that just can't be true under any method you want to use. You want to use lowest intermediate balance, averaging or drugs in, first out, you just can't say that.

Q. Well, the testimony that you claim you haven't got today would be merely to the amount of profit that you made in the drug business. Is that what we're talking about?

A. Some of it, yes.

MR. O'DONNELL: As well as, Your Honor, identifying for Your Honor and for the record the source and amount of all clean money.

THE WITNESS: Yes. I was going to subpoena my employers, the rest of my tax records, coworkers, the casino in Las Vegas I stayed at. You know, I'd like to find this guy the government says I sold 200 pounds of pot to. I don't know who that could be, because I've never even seen 200 pounds of marijuana.

Q. (BY THE COURT) All right. Go ahead, Mr. Libretti.

A. Well, this is pretty much what I wanted to show.

THE COURT: I don't know, Mr. O'Donnell, of any case that says what the proper accounting method is.

MR. O'DONNELL: The Banco Cafetero Panama case [139] Mr. Libretti last cited to you – and I have, by the way, given the citation to your clerk, Your Honor – discusses three possible methods. In the Tenth Circuit I am not aware of any case.

THE COURT: I am not aware of one.

MR. O'DONNELL: Although we are all aware we need to do some kind of a calculation. What I suggest to Your Honor on behalf of Mr. Libretti, that in whatever method he used, there was some figure that is – that was nontainted funds. And that figure was not properly forfeitable unless other things were done, which have not been done.

For example, if the total value of Mr. Libretti's estate, for example, were less than the proven value of drug proceeds in total, there is an argument that could be made that the entire estate could suffer forfeiture.

I don't believe that that argument can hold water, Your Honor, in light of the case law. For example, the Rolls Royce case that I – that he cited to you that a division needs to be made of commingled assets. What I really think you have to do is just determine the figure in the appropriate time period that was clean money. And then that much of the property from that period of time it was forfeited is not [140] properly subject to forfeiture.

THE COURT: All right.

MR. O'DONNELL: And that's making an assumption that all property was forfeit. For example, if there was property not forfeit that may be well how the allegation can occur. We didn't have those records, Judge. I couldn't get that presentation ready for you, because I couldn't have access to the financial records.

THE COURT: Did you ask Mr. Truman for –

MR. O'DONNELL: I did. He said he had boxes that were a mess. Nothing was organized. He couldn't

find anything in them. I telephoned him, Your Honor, right after I was appointed on this case. The report is clear.

MR. LIBRETTI: Something else is that the prosecutor's statement in the presentence investigation report says about 37 kilos, and somehow in the last four months I must have bought 23 kilos of cocaine since I have been in prison, because now it's somehow multiplied to 60.

Q. (BY THE COURT) All right. Well, go ahead and make your argument here on this motion as well as any others. Let's get it over with.

A. Well, on this motion, I just want to say that the government hasn't even given these third party claimants [141] any facts to dispute. All they say is drug proceeds. Well, that only gives the claimant an opportunity to make a general denial and that is hardly a responsive pleading.

If, for example, Michael asked the officer about the diamond – when was it purchased? where was it bought? how was it paid for? – he says he doesn't know. He doesn't know how that diamond was paid for. But it's drug proceeds, it's forfeitable. I don't even think the government met their burden of proof for probable cause under that one, Your Honor.

Q. Well, how did you pay for it?

A. Why don't they tell us?

Q. You are on the stand now and you tell me how you paid for it.

A. I would like to make them to make the burden of proof.

Q. I just asked you the question. How did you pay for it?

A. I paid – do I have to answer this?

MR. O'DONNELL: I suppose you can stand on your right of silence, Mr. Libretti, but I recommend you answer the Judge's question.

A. It was not paid for by drug proceeds.

Q. (BY THE COURT) How did you pay for it?

[142] A. I sent a wire transfer to a gentleman in New York.

Q. That's the diamond broker from whom you bought the stone?

A. Yes.

Q. And how much money was that?

A. The total order was right around 2,900, and 2,850 of that was for the diamond.

Q. 2,800 how much?

A. 850, give or take 20 bucks, because I also bought a loop and some forceps.

MR. O'DONNELL: Your Honor, if I might make a suggestion regarding this issue, under the most resent pronouncement of the supreme court in the Buena Vista case even though we assume this ring was purchased entirely with tainted proceeds, that is not the issue we must focus on in the determination of today's case. Buena Vista looks at the state of mind of Miss Porter.

THE COURT: Yes. I have that in mind, too.

Q. (BY THE COURT) All right. Now, how much did you pay for its setting?

A. I already gave that receipt to you. It's in – I believe it's attached.

Q. That was for some jewelry company in Denver.

A. I think it was $4500 plus 25 for the appraisal.

Q. Did you pay for that in cash?

[143] A. No. I put it on my credit card.

Q. All right. So the ring's all paid for.

A. Yes. The ring –

Q. That was in 1989 –

A. No. It was late '90.

Q. – or late '90.

MR. O'DONNELL: October, I believe was Miss Porter's testimony, Your Honor, of 1990.

THE WITNESS: There were actually two payments. I paid for it in installments. I put a deposit down on the work before they started in October or November.

Q. (BY THE COURT) And at that time you were working at Green River?

A. Yes. I had made over $60,000 prior to that time working at General Chemical.

Q. All right. Did the $2850 that you wired to the diamond broker come out of your Wyochem account?

A. Yes.

Q. All right. Go ahead.

A. Okay. Well, I just wanted to read a little bit from the *United States* versus *Banco Cafetero Panama*, 797 Fed. 2d 1154, at 1159, Second Circuit 1986. It discusses the three approaches that I discussed earlier and then it says, "There is a plausible argument as –"

Q. What page?

[144] A. I'm on page 6 of the brief, but I'm quoting from page 1159 of the case.

"There is a plausible argument, as SONAL suggests, for cumulative forfeiture of all assets exchanged for drugs or drug proceeds. For example, if $100 from the sale of drugs is exchanged for a watch, both the $100 in the hands of the watch seller and the watch in the hands of the drug seller are vulnerable to traceable proceeds, and the government may well be entitled to forfeit both. However, cumulative forfeiture is not permissible simply because available accounting rules afford the government more than one route in tracing forfeitable proceeds. For example, if $100 from the sale of drugs is deposited in an account funded with untainted money, $100 in the account and each $100 withdrawal are all vulnerable to forfeiture, but the government can obtain only a single forfeiture of $100."

I mean, when I look at those bank account books today, you know, when the government is claiming this bank book and where the last deposit was made when I was 12 years old is drug proceeds, I don't see how they could have found probable cause for that.

MR. O'DONNELL: Your Honor, in my view, Mr. Libretti's arguments take us back to where I started [145] just before noon. The burden of the government is to demonstrate probable cause that a substantial connection exists between the property and the criminal activity.

Let's assume for a moment that the government has met their burden. Mr. Libretti's burden, under the case law, is to show by a preponderance – to show there is no connection. He has cited case law that will aid him in that process, but he doesn't have the facts. That is what we are policing the bank records to address the money.

THE COURT: Well, unfortunately, you've got me convinced.

MR. O'DONNELL: I was afraid that might happen.

THE COURT: All right. What I'm going to do is I'm going to remand this matter to the magistrate for a determination as to the –

MS. WOODHOUSE: May we speak first, Your Honor?

THE COURT: Well, I think I know what the law is, and we haven't – he hasn't had the facts that he needs to present it. And I don't think this hearing is fair.

MS. WOODHOUSE: Well, Your Honor, this is a third party hearing. It's not a place for him to challenge this. He's challenging on appeal.

THE COURT: The question before me is whether [146] or not the property that you are forfeiting is tainted or not.

MS. WOODHOUSE: That was resolved, Your Honor, when you entered a forfeiture order based on his CCE plea.

THE COURT: This Second Circuit case that he's cited, Banco something Panama does seem to hold exactly the way he says.

MS. WOODHOUSE: Did they have a plea agreement where the defendant agreed to give up all of this information, all this stuff, first? He agreed to do that, Your Honor, and an order was entered pursuant to his plea agreement and to the information that we had provided that this would be forfeited. This is the third party proceeding. He has no standing nor no right to be here.

MR. O'DONNELL: Your Honor, Miss Woodhouse misspeaks. Your order, Your Honor, provided for a broader hearing. And there is, indeed, authority for a broader hearing, Your Honor, in the case of *United States* versus *Sharir*, 755 Fed. Supp. 77.

THE COURT: Mr. Libretti, have you got some pages from the Court's exhibit?

MR. LIBRETTI: I don't think so.

MR. O'DONNELL: Yes, yes. I apologize, Your [147] Honor.

THE COURT: Okay. Go ahead, Mr. O'Donnell.

MR. O'DONNELL: Your Honor, fundamentally, what we are dealing with here, contrary to the assertions and the vitriol of the government, is Mr. Libretti, by his plea agreement, cannot stipulate to a penalty that is not provided for in the law, other than if property not subject

to forfeiture is being forfeited as he contends. That plea agreement cannot do that.

MS. WOODHOUSE: Your Honor, under 21 USC 853(p), we have a right to any substitute assets included in – including commingled assets, which is what both of these bank accounts are, including anything that will substitute for assets, which were diminished.

THE COURT: Miss Woodhouse, I'm going to know what the facts are before I do a thing.

MS. WOODHOUSE: But the facts are that he earned a million dollars and we only have $410,000 worth of assets. That's the only significant fact.

THE COURT: He is saying this is an unfair proceeding because he hasn't had a chance to subpoena the witnesses. I am going to let him subpoena the witnesses and have a hearing before the magistrate and let the magistrate determine what the facts are.

MS. WOODHOUSE: Your Honor, you are allowing [148] Mr. Libretti to make a fool of this Court and this proceeding.

THE COURT: No, I am not making a fool of this court. I don't think we ever make a fool of the court when we try to do justice. So, that will be what the rule will be and we'll all live by it. I think that this case of the *United States* versus *Banco Cafetero Panama* –

MS. WOODHOUSE: Which was not provided to us, Your Honor.

THE COURT: Oh, yes, it was.

MR. LIBRETTI: It's in my brief.

THE COURT: But this is the only case that is cited in the annotation that I've looked at in U.S. Code Annotated, which does indicate that the process in traceable proceeds of drug transactions is an accounting process and that you don't forfeit the whole account.

MR. O'DONNELL: With all due respect, Your Honor, there are other cases that approach it from a different angle.

THE COURT: I'm sure there are. Before I act on it, I'm going to know all the facts. I'm not going to know just part of the facts. So, under those circumstances, this hearing as to the defendant's motions will be continued before the magistrate.

[149] The defendant may have his subpoenas for the information.

Craig Truman will be required forthwith to deliver to you all of the information that the government has provided, so we don't have to do that twice.

MR. O'DONNELL: Your Honor, may I also request your assistance in either ordering or requesting the United States to cooperate with me in providing records it may already have in here in Cheyenne? And I don't want to do duplicate copying, I just want to get to the numbers.

THE COURT: Now, I shall be glad to hear your arguments with regard to the third party claims. First, Miss Woodhouse.

MS. WOODHOUSE: Thank you, Your Honor. It is the position of the United States that with regard to the ring that Claudia Porter is asserting an interest in, that she was well aware of the defendant's drug distribution activities and the fact that he had significant income as a result of those activities. She is also aware that he had been attempting to con –

THE COURT: Well, the issue really is, under this Buena Vista case, is she an innocent third party who got the property and isn't sure? Now, that's the [150] same thing they argued in the Buena Vista case, that the lady who got the – some sort of a house knew they were drug proceeds.

MS. WOODHOUSE: Your Honor, I didn't understand from reading the Buena Vista case that there was actual testimony to show that she was present during a drug action, that she had seen the cash monies being stuffed into briefcases which were then taken out of town and stored in a storage locker and hotels; that she was well aware and had arguments with the defendant about his drug business; that she was aware of his attempt to conceal this money by hauling it around to different places prior to receiving the house.

THE COURT: Well, that point of view would be arguing guilt by association basis.

MS. WOODHOUSE: It is not, Your Honor, it's arguing –

THE COURT: It argues that if you know that the defendant is dealing in drugs, that all your properties –

MS. WOODHOUSE: Well, Your Honor, she was also aware that even though she knew he had a job, that he had bought a brand-new Toyota Celica at $19,000, he had bought a truck at $16,000, he had bought property for $20,000, all prior – this far exceeds his income for [151] that year – prior to the time that he purchased this ring. That is not an innocent owner. She had knowledge, direct knowledge, and it's not guilt by association.

THE COURT: All right. Go ahead with the rest.

MS. WOODHOUSE: Not only that, Your Honor, but Miss Porter comes in as a coconspirator by her own admission. She went through all kinds of shenanigans to assist defendant in transferring and trying to hide assets of the defendant's from the government so that they would not be seized. She admitted that she went in a disguise to General Chemical for an attempt to get money so that we wouldn't find it. She also entered a false statement about the title for the trailer. She had no interest in that trailer. She didn't want the trailer, but she transferred it into her own name. She transferred the money into the bank account specifically so it would only be in her name, and this was the Wyochem money which had substantial drug deposits in it and she deposited – or she put that money in an account with only her name so that the government couldn't get it. She clearly was involved in his conspiracy to prohibit the government from getting proceeds, drug proceeds.

Your Honor, her credibility is in question. [152] Just let me give you one example. I wouldn't go into all of them, because I think they are fairly obvious, but when

she was up here testifying initially you asked her, "Was that $1300 for you or for him?"

And she said, "Well, it was kind of for him because I used it for his dogs and vets." And when she was up here testifying and Mr. O'Donnell asked her a question and she thought she knew what the answer was supposed to be, he said, "Was that a gift to you"?

"Oh, yes, it was a gift to me." When she had clearly said it was not a gift, it was just simply to help Mr. Libretti out with the care and feeding of his dogs.

She has not shown, Your Honor, that she is an innocent owner as to either the ring or the funds that she clearly knew were drug proceeds, and she clearly was assisting him in trying to avoid having the government seize those proceeds.

THE COURT: What is your position with regard to the First Federal and the LaSalle-Talman account.

MS. WOODHOUSE: Your Honor, our position as to those accounts is that the claim is not a proper third party claim. In 18 – or 21 USC Section 853, it says that in order to assert an interest, the person shall state that they personally have an interest in the [153] profit. The Librettis have not stated that they have an interest. They've simply stated –

MR. O'DONNELL: Your Honor, I object. That mischaracterizes the testimony.

THE COURT: Yes. Dr. and Mrs. Libretti are both named on the account along with the defendant.

MS. WOODHOUSE: They are named on the account, that's correct, Your Honor. But Mrs. Libretti said that she would probably just keep the money and give it to him later when he gets out of jail. There is no intention for them to keep it for themselves.

THE COURT: Mrs. Libretti has every right to do with her property what she wants.

MS. WOODHOUSE: Your Honor, she has not made a legitimate third party claim. Our other argument on that property is that it substitutes an asset for the asset that Mrs. Libretti has concealed from the United States and which we are not able to obtain today.

MR. O'DONNELL: Your Honor, that is beyond the scope of this hearing.

THE COURT: Well, I'm not ruling on any substitute asset theories.

All right. Now, what about the source of the accounts? The testimony I have before me shows that these were monies that were accumulated during the [154] defendant's childhood –

MS. WOODHOUSE: I'm not disputing that, Your Honor.

THE COURT: – and aren't the proceeds of drugs.

MS. WOODHOUSE: It appears that they probably were proceeds of some other activities of the defendant.

THE COURT: Well, that being the case, how can they be forfeited?

MS. WOODHOUSE: Your Honor, they can be forfeited because the defendant has taken numerous money out of the purview of the government and hidden it from – concealed it from us.

THE COURT: I don't know that he has. You might suspect that, but can you proove [sic] it?

MS. WOODHOUSE: Your Honor, we know that he made approximately a million dollars, and we only have $410,000 worth of assets to show for it.

THE COURT: All right. Anything further?

MS. WOODHOUSE: Yes. As to the Lincoln County property, Dr. Libretti clearly and unequivocally stated during his grand jury testimony that he received the deed without any forewarning; that he did not need the property, did not want the property, was not a bona fide purchaser for value of that property. He did not [155] receive it in consideration for the legal fees that he was paying for his son. He simply received it in the mail one day with no notice and had no idea of what it was. He didn't want the property.

THE COURT: I read the deposition at noon and my recollection is that he was notified by a letter postmarked December 24th, presumably it was a Christmas present, saying that he wanted to transfer the lot to him that he had purchased in Wyoming. And then thereafter he got the deed in the mail with a letter.

MS. WOODHOUSE: And did he not expect that property, want that property or make any agreement for that property, Your Honor? The fact that it may have been sent to him by the defendant is just one more attempt for

him to defraud the United States from behind the walls of prison in order to keep all of these assets away from the government.

THE COURT: All right. Anything further?

MS. WOODHOUSE: The Librettis have paid the legal fees and they have said so here today, out of the love and care for their son. They expected nothing in return and they should not be entitled to any kind of tainted property such as the Lincoln County property in order to pay those fees.

THE COURT: Is it not possible, under that [156] theory of accounting that the defendant presents, that this money was purchased with untainted funds?

MS. WOODHOUSE: Your Honor, if you – if you will review the accounts – and I guess now we will have a chance – these accounts are so unclear as to the certain transactions under FIFO, or whatever kind of theory you want to use, they are commingled accounts and under 853(p)(5), it says that if they have been commingled with other property and cannot be divided without difficulty, they shall be forfeited.

THE COURT: All right. We'll decide that when we know more about it.

MR. O'DONNELL: Thank you, Judge. My response is really very brief and entirely on the Buena Vista case. In Buena Vista it was 100 percent tainted. No question about it. And the Court said, "That's not the issue. The issue is what did that lady know about the fact of the purchase."

THE COURT: That's right.

MR. O'DONNELL: And she didn't know it was purchased with drug money, and that is the issue you have to decide with Miss Porter and Mrs. Libretti.

They have come before you and told you that they did not know these assets they claimed to have returned were purchased with drug money. Particularly [157] with Mrs. Libretti, regarding the childhood accounts and land.

Your Honor, I have appeared before you a long time and I have seen very few extraordinarily credible witnesses, but I found Mrs. Libretti to be extraordinarily credible. I don't think she knew anything was going on. They thought this was an attempt by their son to pay them back for monies they have given their son out of love. That means she gets to keep the property.

THE COURT: This was after he was in trouble.

MR. O'DONNELL: She acknowledged they didn't even know it was drug charges, they thought it was gun charges of some kind. That was her testimony to you.

THE COURT: All right.

MR. O'DONNELL: And then regarding Miss Porter, again, it's the same analysis, the supreme court, in fact, the quote from Justice Stevens' plurality opinion identifying the issue, says – the question is, and I quote, "When an owner's lack of knowledge of the fact that her home had been purchased with the proceeds of illegal drug transactions would prohibit her from being an innocent owner." It is not the inferential knowledge that the government presents to you that Miss Porter was hopelessly intertwined with Mr. Libretti, she is – she [158] was

living with him, she was in love with him, but she didn't know the fact that the ring may have been purchased with drug money or the fact that this remaining $1300 may be tainted money. That is the issue and it's got to be decided in favor of these third party claims.

THE COURT: All right. I am going to rule as far as I can on these matters, and we'll get them disposed of so as to limit the magistrate's discovery process.

First, with regard to the ring, I think that Claudia Porter had equally as good a basis for thinking that the ring came from legitimate funds, because the defendant was employed at that time, as she did to think that they were possibly from drug transactions, which at that point she was hoping that maybe he had ceased.

So I'm – I think the Court would be the biggest bully in the world if it went around taking ladies' rings from them. So I'm going to give the ring back.

And with regard to the $1300 account that's leftover [sic], I think that subject is going to have to await our accounting process. That is the windup of the Wyochem account, and I think it's – we're going to have to see what the accounting shows as to whether that's [159] tainted or not. I think there is a possibility that it's not tainted, and if that's the case, Miss Porter is the owner of that account and she would be able to have it.

With regard – the same ruling, I think, has to apply to the Star Valley property. I don't think we can tell whether the money that came out of the Wyochem account for that property is tainted or nontainted. I don't – I really think that the law is not that merely because a tainted dollar

goes into that account, the whole thing is forfeitable, which is really the effect of the government's argument. I don't think that's the law. It certainly isn't in the Second Circuit. And from what I can read in these and notations in USCA, it doesn't appear to me that that is the correct provision of law. And that's why I think we'll have to have this discovery process.

With regard to the two accounts at First Federal and the defendant's childhood home, wherever that was, and the account in the LaSalle-Talman institution, I think it's clear that those are not drug money nor are they tainted in any way. And I think at this point Dr. and Mrs. Libretti are the coowners [sic] with the defendant of the First Federal account, and I've forgotten the manner of ownership of the other one.

[160] MR. O'DONNELL: It was Dr. Libretti and his son, Your Honor.

THE COURT: Yes. I think that was right. So that there I think they are their accounts and those accounts are removed from the forfeiture.

And now that Mr. Libretti has access to some funds, I'm going to deny his motion that the United States supply him with money for a hair cut as well as other things. I think there was a motion for some medical care of some sort. And I think there's fund available for whatever is needed.

Now, with regard to the claims of the defendant that the AK-47's are the property of Michael Zak, no one from Michael Zak's estate has appeared before me today. Those

claims can't be asserted by Mr. Libretti and therefore those items shall remain forfeited.

With regard to the $550 due to Group Industries for guns or gun parts purchased, nobody has appeared for Group Industries, so therefore that's forfeited.

Mr. Libretti claims that $4871 ought to be paid from his forfeited assets to pay off the AT&T Universal card. It's merely an unsecured creditor; nobody appeared on behalf of AT&T, so that's forfeited.

And with regard to the $729 due Heckler and Koch, an importer of firearms, nobody has appeared on [161] their behalf and that is forfeited.

So the defendant's motions with regard to those pieces of property are denied.

With regard to the cashier's checks and the GNMA and FNMA securities, I don't think there is any way we can tell yet whether those are a proceeds of drug transactions or not until we go through this accounting process, so we'll reserve ruling on that.

But Mr. Libretti is reminded that I do not have any record of those certificates. And you are required to turn those in. And I require it PDQ.

Oh, yes, the motion was to recognize your indigence status and give you a haircut, eyeglasses, preventive dental care, and medical attention. If you've got some money now, you can receive what you need to out of that.

Let's see. Oh, yes. The order shall be that the government shall continue to maintain the status quo of the property until the Court has finally heard the matter. And

it is my intent that you shall have all the subpoenas duces tecum and subpoenas that you need to prove your case.

MR. O'DONNELL: And, Your Honor, so that it's clear, I'll make every effort to obtain the records locally and where it's not going to cost anybody [162] anything.

THE COURT: I think that's the way to do it. All right. Is there anything further?

MS. WOODHOUSE: Just one thing, Your Honor. We found out after the last hearing that our certificate numbers for the Barclay's GNMA certificate was not properly given as far as the number. It was in the proper name, and that's the way they searched for it. But I have a letter here that informs us of the proper name and we would ask that Mr. Libretti – number, excuse me – that the defendant be required to provide that certificate.

THE COURT: Well, he, of course, being in custody, can't provide it, but he can tell you where it can be located and I am requiring him to do that. You may have a copy of this letter, Mr. O'Donnell.

MR. O'DONNELL: Thank you, Your Honor.

THE COURT: I will give it to the clerk and she can furnish you with a copy.

All right. Now is there anything else.

MS. WOODHOUSE: Your Honor, just for our information, in the magistrate's hearing, will there be established a particular form of accounting or will that be a subject of argument?

THE COURT: That's going to be a subject of [163] argument. Apparently, according to the Second Circuit, there are three different ways of accounting for drug proceeds in a commingled account. And I think we're going to have to divine what the Tenth Circuit would adopt. I would guess that the Tenth Circuit might very likely follow the Second Circuit ruling. That would be my guess. But I don't have the faintest idea of what they really will do.

MS. WOODHOUSE: Your Honor, will the United States be required then to show each and every item that is listed in the forfeiture order or just those being contested as of this hearing?

MR. O'DONNELL: Well, Your Honor, we're contesting everything generally because we need to trace the source of the funds.

THE COURT: I understand he's contesting everything. I think you're going to have to do some tracing here, at least in these commingled accounts, with regard to the – like those condominiums and whatnot. I suppose that's somehow or another going to have to be shown to some extent. You probably wouldn't be able to show with great precision, but you'll have to make a prima facie hearing.

My point is that I think my denial of his request for subpoenas were probably improper and that [164] he's convinced me now that he ought to have that chance. What he shows at the hearing, I think will have to be another matter. And we'll have the magistrate's recommendation on that. I presume that will go forward in

April. I wouldn't be here, but the magistrate will, that's why I've assigned it to the magistrate.

MR. O'DONNELL: Judge, so that the magistrate is clear on what you are asking him to do, he will make an advisory ruling and advisory fact findings.

THE COURT: Right.

MR. O'DONNELL: Okay. Thank you very much.

THE COURT: Thanks very much.

MS. WOODHOUSE: Thank you, Your Honor.

(Hearing proceedings concluded 3:50 p.m., March 26, 1993.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

(Caption Omitted In Printing)

ORDER AMENDING DECEMBER 23, 1992 FORFEITURE ORDER

(Filed Apr. 2, 1993)

This matter comes before the Court on March 26, 1993. The Court, having considered the materials on file both in support of and in opposition to the motions, having considered the arguments of counsel, and being fully advised in the premises, FINDS and ORDERS as follows:

BACKGROUND

Joseph Libretti ("Libretti") pleaded guilty to Count 6 of the superseding indictment, which charged him with engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848. On December 23, 1992, Libretti was sentenced to 240 months incarceration and was fined $5,000. Certain assets owned by Libretti were seized by the government pursuant to an order entered by this Court on December 23, 1992, in accordance with the criminal forfeiture statute, 21 U.S.C. § 853(a) (1992), which provides:

> **(a) Property subject to criminal forfeiture**
> Any person convicted of a violation of this subchapter . . . punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law –

> (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
> (2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and
> (3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

Libretti filed a motion for stay of execution of order of criminal forfeiture, and to amend the order of criminal forfeiture. In addition, Joseph Libretti Sr. (Libretti's father) and Claudia Porter filed motions for return of property pursuant to 21 U.S.C. 853(n)(6)(A) and (B), which provides:

> **(n) Third party interest**
> (6) If, after the hearing, the court determines that the petitioner has established by a **preponderance of the evidence** that –
>
> (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or

> interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or (B) The petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;
>
> the court shall amend the order of forfeiture in accordance with its determination. (emphasis added).

On February 12, 1993, the Court ordered the government to maintain the status quo on all forfeited property pending this hearing. The Court however, made an exception allowing the government to sell two condominiums located at 9430 and 9328 West Ontario Drive, Littleton, Colorado. The Court further ordered the government to notify all parties known to be claiming an interest in the forfeited property of this hearing.

DISCUSSION

Third Party Interests

Notice of forfeiture was published three times from January 6, 1993 to January 21, 1993, pursuant to 21 U.S.C. § 853(n) in the following newspapers: (1) Green River Star, Green River, Wyoming; (2) Chicago Tribune, Chicago, Illinois; (3) Kemmerer Gazette, Kemmerer, Wyoming; (4) Wyoming State Tribune, Cheyenne, Wyoming; and (5) The Rocky Mountain News, Denver, Colorado. In addition, the following people were notified of this hearing by a letter dated February 19, 1993, sent by certified mail return receipt requested: Mr. and Mrs. Edward Zak, Mr. and Mrs. Joseph Libretti Sr., AT&T Universal Card, Heckler & Koch Inc., Claudia Porter, and Group Industries.

The United States, in seeking forfeiture, "must establish probable cause to believe that a substantial connection exists between the property to be forfeited and an illegal exchange of a controlled substance." *U.S. v. One Single Family Residence Located at 15603 85th Avenue North, Lake Park, Palm Beach County, Florida*, 933 F.2d 976, 979 (11th Cir. 1991). "Once the government has met its burden of showing probable cause to institute the forfeiture action, the burden then shifts to the claimant to show by a preponderance of the evidence that the property was not subject to forfeiture." *United States v. Twenty-Two Thousand, Two Hundred Eighty Seven Dollars ($22,287.00), United States Currency*, 709 F.2d 442, 446 (6th Cir. 1983); *see also United States v. One Parcel of Real Property With Buildings, Appurtenances, and Improvements, Known as Plat 20, Lot 17, Great Harbor Neck, New Shoreham, Rhode Island*, 960 F.2d 200, 204 (1st Cir. 1992).

The criminal forfeiture statutes protect innocent owners of forfeited property. This protection is not limited to bona fide purchasers. *United States v. A Parcel of Land, Buildings, Appurtenances and Improvements, Known as 92 Buena Vista Avenue, Rumson, New Jersey*, 113 S. Ct. 1116, 1134 (1993).

21 U.S.C. § 881(a)(6) provides that:

> [N]o property shall be forfeited . . . to the extent of the interest of an owner, by reason of any act or omission established by that owner to have

been committed or omitted without the knowledge or consent of that owner.

This clause "exempts certain proceeds – proceeds owned by one unaware of their criminal course from forfeiture." *Buena Vista* at 1136. This is known as the "innocent owner" defense. Thus, property is not forfeitable unless (1) it can be traced to illegal sales of controlled substances; and (2) there is no innocent owner.

Mrs. Joseph Libretti (defendant's mother) and Claudia Porter appeared at the hearing to assert their interests in certain forfeited property.

(1) $1,333.45 to Claudia Porter

In December of 1990, Porter used a power of attorney from Libretti to transfer $9,333.45 from Libretti's Wyochem account to her personal account in State Bank of Green River. Porter sent $8,000 from this account to Legal Research in Chicago, Illinois for Libretti's defense costs. The remaining $1,333.45 was frozen, and subsequently taken by the government pursuant to the December 23, 1992 forfeiture order.

Porter argues that she should be able to keep the $1,333.45 as compensation for services rendered and expenditures made in caring for Libretti's dogs. Porter asserts that she thought these funds were legitimate. The government counters that the funds were "tainted," and that Porter knew it.

Libretti's testimony at the hearing established that at least a portion of the Wyochem account consisted of tainted funds, however, it is unclear what percentage.

The government argues that because a portion of the funds can be tied to illegal drug sales, that the full amount in the account should be forfeited.[1]

In certain circumstances, even though only **part** of a person's property is tainted, the whole property may be subject to forfeiture. Section 853(a)(2) provides that "any of the person's property used, or intended to be used, in

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[1] The government also asserts a "substitute asset" theory. Because Libretti allegedly made in excess of $1,000,000 in drug trafficking, and the total value of the assets forfeited is significantly less, the government argues that all of the funds in the account should be forfeited as "substitue assets," even though only a portion is tainted.

21 U.S.C. § 853(p) provides:

> (p) **Forfeiture of substitute property**
> If any of the property described in subsection (a) of this section, as a result of any act or omission of the defendant –
>
> (1) cannot be located upon the exercise of due diligence;
>
> (2) has been transferred or sold to, or deposited with, a third party;
>
> (3) has been placed beyond the jurisdiction of the court;
>
> (4) has been substantially diminished in value; or
>
> (5) has been commingled with other property which cannot be divided without difficulty;
>
> the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

However, the government has not met its burden of proof that property subject to criminal forfeiture pursuant to § 853(a) falls into one of the five categories listed above, and that substitute assets should be forfeited in lieu of these assets.

any manner or part, to commit, or to facilitate the commission of, such violation" shall be forfeited. (emphasis added). The Tenth Circuit interpreted § 853(a)(2) in *United States v. Harris*, 903 F.2d 770, 777 (10th Cir. 1990). In that case, the Tenth Circuit held that $413,493 in cash, which was found in a vehicle along with three-quarters of a pound of marijuana and other drug paraphernalia, was properly forfeited because the $413,493 was used or was intended to be used to facilitate the illegal activity. *Id.*

However, this case is different. The government has not argued that the funds in Libretti's Wyochem account were used directly to facilitate an illegal activity. Therefore, the analysis of § 853(a)(2) in *Harris* is not directly in point. Rather, the proper focus is on § 853(a)(1) and § 881(a)(6). Section 853(a)(1) provides that "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation" shall be forfeited. Section 881(a)(6) provides that:

> All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, **all proceeds traceable** to such exchange . . . [shall be subject to forfeiture]. (emphasis added).

The key is that under these provisions, only property that is traceable to the illegal transaction is forfeitable. *United States v. One 1980 Rolls Royce*, 905 F.2d 89, 91-92 (5th Cir. 1990) ("We conclude that a court should not grant summary judgment and permit the complete forfeiture of all properties when there is evidence that the properties were purchased at least in part with legitimate

funds. Though the burden will be on the claimant . . . , he should be permitted to establish what portions of the properties were purchased with legitimate funds."); *United States v. Banco Cafetero Panama*, 797 F.2d 1154 (2d Cir. 1986); *United States v. Certain Real Property Located at 2323 Charms Road, Milford Township*, 726 F. Supp. 164, 169-70 (E.D. Mich. 1989); *United States v. One Parcel of Real Property With Buildings*, 705 F. Supp. 710 (D. R.I. 1989) *vacated on other grounds by* 970 F.2d 370 (1st Cir. 1990).

This Court agrees with the Fifth Circuit, when it stated that:

> [T]he interest acquired as a result of mortgage payments made with the proceeds of drug transactions should be forfeitable. We do not believe, however, that forfeitability spreads like a disease from one infected mortgage payment to the entire interest in the property acquired prior to the payment. After all, only the actual proceeds of drug transactions are forfeitable. Unless section 881(a)(6) deprives persons accused of dealing drugs of the right to own any property, the existence of an undivided interest in a felon's property which constitutes proceeds cannot mean that his entire property is proceeds.

One 1980 Rolls Royce 905 F.2d at 90 *quoting Real Property Located at 2323 Charms Rd.* 726 F. Supp. at 169-79. Applying this reasoning to the instant case, the Court holds that the mere fact that a portion of Libretti's Wyochem account is tainted, does not mean that the entire account is forfeitable. *Banco Cafetero Panama* 797 F.2d at 1159.

It is unclear from the testimony at this hearing what portion of Libretti's Wyochem account can be traced to an

illegal transaction. Without this information, it is also unclear what portion of the $1,333.45, which was been claimed by Porter, is traceable to an illegal transaction. If none of the money is traceable to an illegal transaction, the $1,333.45 should be remitted to Porter. Even if all, or a portion of the $1,333.45 can be traced to an illegal transaction, Porter may still be entitled to the full amount if she can show by a preponderance of the evidence that she is an innocent owner. 21 U.S.C. § 881(a)(6).

The Court orders that a hearing be held before the magistrate to make findings of fact as to the source of funds in the Wyochem account. The Court will reserve ruling on the disposition of the $1,333.45 claim made by Porter.

(2) Two Piece Diamond Engagement Ring to Claudia Porter

In October of 1990, Libretti gave Porter a diamond ring set valued at $2,850. Testimony showed that Libretti and Porter had an intimate relationship from November of 1989 through December of 1991.

After hearing testimony, the Court finds that the diamond ring set was purchased with legitimate funds. The Court also finds that Porter is an innocent owner of the diamond ring set, having no knowledge that any funds traceable to illegal acts were used to purchase the set.

(3) Star Valley Property valued at $19,200 to Joseph Libretti Sr.

After Libretti was arrested, in December of 1991, Joseph Libretti Sr. paid a retainer to an attorney on behalf of his son, in the approximate amount of $15,000. Subsequently, Libretti conveyed real property to his father having the following description: Township 35 North, Range 118 West, Section 31, Lot 39 of Star Valley Ranch, Plat 10, Lincoln County, Wyoming. Testimony at the hearing established that Libretti purchased the Star Valley property in August of 1990, by check from his Wyochem account in the approximate amount of $19,200.

Mrs. Libretti testified that she and her husband, Joe Libretti Sr., thought that their son had two sources of income: a firearms business located in Lakewood, Colorado, and his job at General Chemical. Mrs. Libretti testified that she and her husband were unaware that their son was involved in illegal drug transactions. Therefore, they had no knowledge that the proceeds used to buy the Star Valley property may have been tainted.

The Court reserves ruling on the disposition of this property, and orders that the magistrate conduct a hearing to determine the source of the funds used to purchase the property.

(4) First Federal Bank for Saving, Account # 38103-8 and Lasalle Talman Bank, Account # 460079767

Mrs. Libretti was uncertain of the amounts in these bank accounts, but stated that they were "not great amounts." The First Federal account was opened when Libretti was a young boy. Birthday money and allowances

were deposited in the account. When pushed to give an approximate amount, Mrs. Libretti estimated that $700 was in the account. The last deposit in this account was made on July 7, 1975.

Libretti opened the Lasalle Talman account when he was in high school. The last deposit in this account was made on December 28, 1981.

The named owners of the First Federal account are Joseph V. Libretti, Jr., Beverly E. Libretti, and Joseph V. Libretti, joint tenants with the right of survivorship. The named owners of the Lasalle Talman account are Joseph V. Libretti Jr., and Joseph V. Libretti, joint tenants with the right of survivorship.

The Court finds that these proceeds are not traceable to illegal drug transactions, and that Mr. Libretti, as a joint tenant on both accounts has standing to assert his interest in the accounts. Because there is no nexus between these funds and Libretti's illegal drug transactions, it is ordered that the government immediately return the passbooks to these two accounts to Mr. and Mrs. Libretti together with the monies withdrawn by the government plus interest at a rate of 3.21% per anum running from the date the funds were withdrawn.

(5) Other Third Party Claims

Although proper notice was given, no other parties appeared at the hearing to assert their third party interests pursuant to 21 U.S.C. § 853(n). The Court holds that any third party interests that were not asserted at the March 26, 1993 hearing are waived.

Libretti's Interests

On October 5, 1992, Libretti entered into a plea agreement in which he agreed to forfeit all of the property listed in the Motion for Entry of Forfeiture Order filed by the government on December 23, 1992, pursuant to 21 U.S.C. § 853. In accordance with this plea agreement, the Court entered an Order of Forfeiture, which was filed on December 23, 1992. Subsequently, Libretti asserted interests in the forfeited property. The government argues that Libretti already agreed to forfeit specific property in the plea agreement, and therefore he has no right to claim an interest in that property.

However, after further review of the plea agreement and the December 23, 1992 Order of Forfeiture, the Court has determined that it may be unjust to enforce the specific forfeiture provisions in the plea agreement. Forfeiture statutes do not mandate forfeiture of property purchased with legitimate funds. *United States v. One 1980 Rolls Royce, VIN # SRL 390955*, 905 F.2d 89, 90 (5th Cir. 1990) ("We do not believe . . . that forfeitability spreads like a disease. . . . ").

It is also important to note that "a defendant's concession in a plea agreement to the forfeiture of his property 'does not make it so.' " *United States v. Boatner*, 966 F.2d 1575, 1581 (11th Cir. 1992) *citing United States v. Reckmeyer*, 786 F.2d 1216, 1222 (4th Cir. 1986); *see also United States v. Roberts*, 749 F.2d 404, 409 (7th Cir. 1984) *cert. denied* 479 U.S. 850 (1986) ("The mere fact that the defendant has agreed an item is forfeitable in a plea agreement, does not make it so.").

Finally, this Court is not bound to accept the forfeiture provisions in a plea agreement. FED. R. CRIM. P. 11(e)(4). Indeed, the Court may have some obligation in relation to the plea agreement to provide safeguards to "insure the defendant what is reasonably due in the circumstances." *United States v. Baldacchino*, 762 F.2d 170 (1st Cir. 1985); *Santobello v. New York*, 404 U.S. 257 (1971).

THEREFORE it is

ORDERED that the Magistrate conduct a fact finding hearing in which Libretti is given an opportunity to show by a preponderance of the evidence that his property is not subject to forfeiture. The Magistrate will also make findings of fact as to the source of funds in the Wyochem account as it pertains to the $1,333.45 claimed by Claudia Porter, and the $19,200 used to purchase the Star Valley property.

ORDERED that the government immediately return the diamond ring set to Claudia Porter.

ORDERED that the government immediately return the passbooks from the First Federal and Lasalle Talman accounts to Mr. and Mrs. Libretti together with the monies withdrawn by the government plus interest at a rate of 3.21% per anum running from the date the funds were withdrawn.

ORDERED that the rights of third parties who failed to make claims to forfeited property at the hearing, after proper notice was given, are waived. This includes the rights of Michael Zak, Group Industries, AT&T Universal Card, and Heckler & Koch.

ORDERED that Libretti's motion for stay of execution of the order of criminal forfeiture be **DENIED.**

ORDERED that the Libretti's motion for issuance of subpoenas duces tecum in forma pauperis be **GRANTED.**

ORDERED that Libretti's motion for and extension of time to file a notice of appeal in order to appeal the $50 special assessment is **DENIED.**

ORDERED that Libretti's motion to compel the Laramie County Detention Center to recognize his indigent status and to provide him with free haircuts, eyeglasses, preventive dental care, and medical attention is **DENIED.**

ORDERED that Dr. Joseph Libretti's motion for third party interests in cashiers checks and GNMA and FNMA securities pursuant to 21 U.S.C. § 853(n)(6)(A) is **DENIED.**

ORDERED that Libretti's motion for appointment of counsel and request for $2,500 to enable him to make a good faith effort to comply with this Court's order compelling Libretti to turn GNMA certificates over to the government is **DENIED.**

ORDERED that Libretti's motions for return of property under FED. R. CRIM. P. 41(e) are **DENIED.**

ORDERED that the government maintain the status quo of all forfeited property pending the magistrate's hearing, and this Court's subsequent rulings on whether Libretti has any legitimate claim to forfeited property, whether Dr. and Mrs. Libretti have a legitimate claim to

the Star Valley property, and whether Claudia Porter has a legitimate claim to the $1,333.45.

Dated this 2nd day of April, 1993.

/s/ illegible
UNITED STATES
DISTRICT JUDGE

UNITED STATES of America,
Plaintiff-Appellee,

v.

Joseph V. LIBRETTI, Jr.
Defendant-Appellant.

No. 93-8000.

United States Court of Appeals,
Tenth Circuit.

Oct. 19, 1994.

David D. Freudenthal, U.S. Atty., David A. Kubichek, Asst. U.S. Atty., D. Wyo., Casper, WY, for plaintiff-appellee.

Michael G. Katz, Federal Public Defender, Jenine Jensen, Asst. Federal Public Defender, Denver, CO, for defendant-appellant.

Defendant-appellant Joseph V. Libretti, Jr. also filed pro se briefs.

Before LOGAN and BARRETT, Circuit Judges, and RUSSELL,* District Judge.

LOGAN, Circuit Judge.

Defendant Joseph V. Libretti, Jr. appeals from an order of criminal forfeiture. He contends that (1) the district court erred in not making factual findings as to the forfeitability of assets; (2) he was not advised of and did not waive his right to a jury trial on the forfeiture

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* Honorable David L. Russell, District Judge, United States District Court for the Western District of Oklahoma, sitting by designation.

issues; and (3) even if his assets were properly forfeited, the forfeiture order violated the Excessive Fines Clause of the Eighth Amendment. We exercise jurisdiction under 18 U.S.C. § 3742(a) and affirm the order of forfeiture.[1]

A grand jury returned a superseding indictment against defendant containing eleven counts of various drug, firearms, and money laundering violations, including continuing criminal enterprise (CCE), 21 U.S.C. § 848. After one week of trial, defendant entered into a plea agreement. Pursuant to that agreement, he pleaded guilty to the CCE count and to forfeiture of "all known assets as prescribed in 21 U.S.C. § 853 and assets which are discovered at any later time up to $1,500,000." I R. tab 210 at 2. The plea agreement further provided that defendant would forfeit

> his right, title, and interest in all of his assets . . . including, but not limited to: all real estate; all personal property, including guns, the computer, and every other item now in the possession of the United States; all bank accounts, investments, retirement accounts, cash, cashier's checks, travelers checks, and funds of any kind.

Id. at 3. In exchange for defendant's plea agreement the government agreed to recommend the minimum sentence applicable to a CCE conviction, twenty years imprisonment, and not to pursue other criminal charges against him.

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[1] After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed.R.App.P. 34(a); 10th Cir.R. 34.1.9. The case is therefore ordered submitted without oral argument.

At the change of plea hearing, the district court questioned defendant regarding the voluntariness of his guilty plea. The district court also advised defendant about the forfeiture:

> And then under the topic Forfeiture, it alleges that upon conviction of the defendant for engaging in a continuing criminal enterprise, the United States is entitled to forfeiture of all property of any kind constituting or derived from proceeds [defendant] obtained directly and indirectly by engaging in said continuing criminal enterprise; all property of any kind which was used or intended for use in any manner or part to commit or to facilitate the commission of this criminal – continuing criminal enterprise, including but not limited to the following, and then there is listed real property, your lot in Star Valley, conveyances of two vehicles, cash proceeds over a hundred thousand dollars and then another $12,000 and a five – 5,100 and 7,600 amount in currency and jewelry and property consisting of a mobile home and a computer system, bank accounts that are listed in the Indictment, investments that are listed in the Indictment, the additional cashier's checks and the contents of safe deposit boxes, and that's it.

II R. 18-19. The district court further stated that the forfeiture applied to all property owned by defendant "by reason of any drug transaction." *Id.* at 21. Defendant admitted that he understood the indictment and plea agreement including the provisions concerning forfeiture. *Id.* at 19-21. The district court approved the plea agreement after determining the guilty plea was voluntary and factual.

The district court later sentenced defendant to twenty years imprisonment, five years supervised release, a $5,000 fine, a $50 special assessment, and 500 hours of community service.[2] The district court also granted forfeiture pursuant to the plea agreement. At the conclusion of the sentencing hearing, defendant objected to the failure of the district court to find a factual basis for the whole forfeiture. XIII R. 25 (record in appeal No. 93-8001). The district court noted the objection, but determined that there was sufficient evidence to warrant granting forfeiture. On December 23, 1992, the district court entered an order of forfeiture pursuant to 21 U.S.C. § 853. The order stated that defendant "agreed to forfeit all property," I R. tab 259 at 1, and then specifically listed property to be forfeited. Defendant appealed from the order of forfeiture.

Subsequently, the district court held a hearing on defendant's motions for stay and to amend the forfeiture order and on third party claims to the forfeited property, all made on or after January 19, 1993. On February 12, 1993, the district court determined that ownership of certain items of forfeited property was in dispute and that because it was willing to consider defendant's motion to amend, the December 23, 1992 order was not final. The district court stated that defendant's appeal was premature and then scheduled a hearing to consider ownership of the disputed property.

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[2] Defendant appeals the imposition of the fine and the requirement of community service in appeal No. 93-8001, also decided and affirmed today.

After the hearing the district court amended the forfeiture order to delete certain property owned by third parties. The district court also ordered the magistrate judge to conduct fact finding hearings to address additional third party interests in certain property listed in the forfeiture order to consider whether it was in fact forfeitable. The government filed motions for reconsideration and to stay proceedings before the magistrate judge pending appeal. V R. tabs 353, 374 (record in appeal No. 93-8001). The district court granted the motion for stay.

I

We first consider whether the district court's actions after the notice of appeal was filed deprives us of jurisdiction.[3] We have jurisdiction to consider a final decision

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[3] The government has also filed a motion to dismiss this appeal as moot. The government contends that because defendant pleaded guilty to CCE and consented to forfeit his assets he lacks a legally cognizable interest in the outcome of the appeal. "In general a case becomes moot ' "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." ' " *Murphy v. Hunt*, 455 U.S. 478, 481, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353 (1982) (quoting *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396, 100 S.Ct. 1202, 1208-09, 63 L.Ed.2d 479 (1980), quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 1950-51, 23 L.Ed.2d 491 (1969)). Because defendant has appealed the order of forfeiture, as is discussed hereafter, the issues in this case are still "live," and defendant has an interest in the outcome of this appeal. *Cf. United States v. Fischer*, 833 F.2d 647, 648 (7th Cir. 1987) (prosecutor's appeal from district court's order granting defendant reimbursement of funds was moot once forfeiture of funds was established under plea agreement and plea agreement and

of the district court. 28 U.S.C. § 1291. A sentencing decision is a final decision, *see Midland Asphalt Corp. v. United States*, 489 U.S. 794, 798, 109 S.Ct. 1494, 1497-98, 103 L.Ed.2d 879 (1989); *United States v. Snell*, 922 F.2d 588, 590 (10th Cir.1990), and, as defendant concedes, a forfeiture is part of the criminal sentence. *United States v. Elgersma*, 971 F.2d 690, 694 (11th Cir.1992) (21 U.S.C. § 853(a) makes clear that forfeiture is part of punishment); *United States v. Hernandez-Escarsega*, 886 F.2d 1560, 1577 (9th Cir.1989) (same), *cert. denied*, 497 U.S. 1003, 110 S.Ct. 3237, 111 L.Ed.2d 748 (1990); *United States v. Sandini*, 816 F.2d 869, 875 (3d Cir.1987) (same); *see United States v. Songer*, 842 F.2d 240, 241 (10th Cir.1988) (forfeiture treated as part of sentence).[4]

Although the district court has jurisdiction to consider third party claims to property, *see* 21 U.S.C. § 853(n) (providing means for third parties to obtain their property which has been forfeited), after a notice of appeal is

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order of forfeiture were not contested). Accordingly, the appeal is not moot.

[4] If, however, a defendant timely moves to correct sentence pursuant to Fed.R.Crim.P. 35(c), that motion renders an otherwise final order nonfinal until the district court disposes of the motion. *United States v. Corey*, 999 F.2d 493, 494-96 & 496 n. 3 (10th Cir.), *cert. denied*, ___ U.S. ___, 114 S.Ct. 574, 126 L.Ed.2d 473 (1993). Rule 35(c) permits the district court to correct a sentence imposed as a result of technical, arithmetic, or other clear error within seven days of the imposition of sentence. Here, defendant's request to amend the order of forfeiture was not made within the permissible time period and is therefore not a timely Rule 35(c) motion, *see Corey*, 999 F.2d at 494-96, and the requested modification of the forfeiture order was beyond the scope of Rule 35(c) relief.

filed, the district court lacks jurisdiction to consider a defendant's claims. *See Berman v. United States*, 302 U.S. 211, 214, 58 S.Ct. 164, 166, 82 L.Ed. 204 (1937). Thus, any subsequent actions by the district court do not defeat our jurisdiction.

II

Defendant argues that the district court erred in ordering forfeiture of the nonforfeitable property in light of his objection at the sentencing and the court's own post-judgment rulings. He alleges that factual findings must be made establishing that the assets to be forfeited are part of a continuing series of offenses. Defendant maintains that the trial testimony and change of plea and sentencing hearings show that there was not a sufficient nexus to support a forfeiture of accounts containing legitimate earnings such as his employees savings plan, IRA accounts, and bank accounts containing his paychecks.

Federal Rule of Criminal Procedure 11(f) provides that "[n]otwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea."[5] The government contends that Rule 11(f) applies only to the guilty plea and imposes

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[5] Defendant also contends that Fed.R.Crim.P. 32(c)(3)(D) requires factual findings when a defendant alleges an inaccuracy in the presentence report. Because the district court did not rely on any alleged inaccuracies in the presentence report when it entered its order of forfeiture, after defendant stipulated to forfeiture within his guilty plea, we focus our analysis on Rule 11(f).

no duty on the district court to ensure a sufficient factual basis exists to support the stipulated forfeiture in the plea agreement. Whether Rule 11(f) applies to a stipulated forfeiture in a plea agreement is an issue of first impression in this circuit. Four circuits have considered this issue and have reached divergent conclusions.

In *United States v. Roberts*, 749 F.2d 404, 409 (7th Cir.1984) (a RICO case), *cert. denied*, 470 U.S. 1058, 105 S.Ct. 1770, 84 L.Ed.2d 830 (1985),[6] the Seventh Circuit held that Rule 11(f) applies to forfeitures included as part of a plea agreement just as it applies to the guilty plea. "The mere fact that the defendant has agreed that an item is forfeitable, in a plea agreement, does not make it so; the trial court must ascertain whether it [is forfeitable]." *Id.* "A defendant's waiver of his right to trial cannot be said to have a factual basis, where a forfeiture of property is involved, unless the property is in fact subject to forfeiture." *Id.* at 410.

In *United States v. Reckmeyer*, 786 F.2d 1216 (4th Cir.), *cert. denied*, 479 U.S. 850, 107 S.Ct. 177, 93 L.Ed.2d 113 (1986), the Fourth Circuit agreed with the reasoning in *Roberts* that a defendant's mere agreement to forfeit an item in the plea agreement does not make the item forfeitable. The court held that Rule 11(f) "requires the district court to inquire beyond the agreement to determine if there is a factual basis for the forfeiture of the assets." *Id.*

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[6] Cases applying the RICO forfeiture statute, 18 U.S.C. § 1963, may be used to construe § 853 due to the similarity of the two statutes. *United States v. Bissell*, 866 F.2d 1343, 1348 n. 3 (11th Cir.), *cert. denied*, 493 U.S. 849, 876, 110 S.Ct. 146, 213, 107 L.Ed.2d 104, 166 (1989).

at 1222. That court determined, however, that the record of the Rule 11 proceeding established a sufficient factual basis for the forfeiture.

The Fifth Circuit took a more lenient approach in *United States v. Bachynsky*, 949 F.2d at 722, 730 (5th Cir.1991), *cert. denied*, ___ U.S. ___, 113 S.Ct. 150, 121 L.Ed.2d 101 (1992), when it held "that the requirement of Rule 11(f) that the factual basis for a plea be established at the plea hearing does not apply to an order of forfeiture." It determined the district court's order of forfeiture would be upheld if the record provided a factual basis for forfeiture. *Id.* (citing *United States v. Crumbley*, 872 F.2d 975, 977 (11th Cir. 1989)). Although the court acknowledged the statement in *Reckmeyer* that a defendant's mere acquiescence in a plea agreement that an item is forfeitable does not make it so, it further recognized that the defendant's affirmative answers to questions at the plea hearing creates a substantial burden to overcome. Because the defendant in *Bachynsky* had never objected at sentencing to the forfeiture provisions of the plea agreement, nor provided evidence challenging whether the property was acquired or maintained by racketeering, the Fifth Circuit concluded that the defendant had not established an inadequate factual basis for the forfeiture.

The Eleventh Circuit rejected the analysis of *Reckmeyer* and *Roberts*. *United States v. Boatner*, 966 F.2d 1575, 1581 (11th Cir. 1992),[7] held "that a sentencing judge is not

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[7] The Eleventh Circuit previously had this forfeiture issue before it in *Crumbley*, 872 F.2d 975. In that case the court assumed, without deciding, that Rule 11(f) applied to the forfeiture portion of the plea agreement and determined that the rule

required under Rule 11 to determine whether there is a factual basis for a defendant's concession to a criminal forfeiture pursuant to his plea bargain with the government." The court reasoned that because the forfeiture provision is "not a plea to a substantive charge, but a sanction to which the parties agree as a result of the defendant's plea," Rule 11(f) only applies to the guilty plea. *Id.* Because the defendant in *Boatner* agreed to forfeit property as a result of a bargained for exchange between the parties, the court affirmed the order of forfeiture.

We agree with the holding and reasoning in *Boatner*. The parties both acknowledge that criminal forfeiture under § 853 is a part of the sentence, not a part of the substantive offense. The courts in *Roberts*, *Reckmeyer*, and *Bachynsky* fail to note this distinction. We question whether the Seventh Circuit would continue to apply the holding in *Roberts* in light of its more recent determinations that forfeiture is not an element of the offense but rather is punishment for an offense when a conviction has been entered. *See United States v. Simone*, 931 F.2d 1186, 1199 (7th Cir.), *cert. denied*, ___ U.S. ___, 112 S.Ct. 584, 116 L.Ed.2d 609 (1991); *United States v. Herrero*, 893 F.2d 1512, 1541 (7th Cir.), *cert. denied*, 496 U.S. 927, 110 S.Ct. 2623, 110 L.Ed.2d 644 (1990).

In addition, it is settled law that a lawful plea agreement is enforceable. *United States. v. Khan*, 835 F.2d 749, 752 (10th Cir.1987), *cert. denied*, 487 U.S. 1222, 108 S.Ct.

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is satisfied if the entire record provides a factual basis for the forfeiture. *Id.* at 976. *Boatner*, however, essentially overrules *Crumbley*. *See United States v. Herndon*, 982 F.2d 1411, 1417 (10th Cir. 1992).

2881, 101 L.Ed.2d 915 (1988). The government and a defendant and his attorney may arrive at a bargain "that a specific sentence is the appropriate disposition of the case." Fed.R.Crim.P. 11(e)(1)(C); *see United States v. Benchimol*, 471 U.S. 453, 455, 105 S.Ct. 2103, 2104-05, 85 L.Ed.2d 462 (1985). As long as the plea agreement is lawful, a defendant should be bound by its terms. *United States v. Alexander*, 869 F.2d 91, 94 (2d Cir.1989).

Defendant argues that the plea agreement and, therefore, his guilty plea, were not lawful and should not be enforced because he agreed to forfeit only the assets listed in the indictment or only property directly associated with the drug transactions. He contends that the plea agreement is ambiguous and vague and he would not have knowingly and voluntarily agreed to forfeit all of his property.

The voluntariness of a guilty plea is a question of federal law subject to de novo review. *United States v. Rhodes*, 913 F.2d 839, 843 (10th Cir.1990), *cert. denied*, 498 U.S. 1122, 111 S.Ct. 1079, 112 L.Ed.2d 1184 (1991). A guilty plea must be knowing and voluntary. *Santobello v. New York*, 404 U.S. 257, 261, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971); *United States v. Elias*, 937 F.2d 1514, 1517 (10th Cir.1991). A defendant's decision to plead guilty must be deliberate and intelligent and chosen from available alternatives. *Rhodes*, 913 F.2d at 843. "[T]o determine whether a plea is voluntary, a court must assess whether the defendant fully understood the consequences of the plea." *United States v. Williams*, 919 F.2d 1451, 1456 (10th Cir.1990), *cert. denied*, 499 U.S. 968, 111 S.Ct. 1604, 113 L.Ed.2d 667 (1991). The defendant's attorney "and the

court have a duty to apprise the defendant of the consequences of the plea and ensure that it is voluntary." *Id.* Federal Rule of Criminal Procedure 11(c)(1) requires that a district court must, among other things, ensure the defendant understands the nature of the charge and the mandatory minimum and maximum penalties. *Elias*, 937 F.2d at 1517.

In this case, the district court thoroughly assessed whether defendant understood the consequences of the guilty plea. The court informed him that all property described in the CCE count of the indictment could be forfeited. II R. 7. Defendant only questioned the extent to which the $1,500,000 limit on forfeiture applied to future legitimate earnings. His attorney and the district court agreed that the $1,500,000 limit applied only to products of drug transactions and not to legitimate future earnings. *Id.* at 3-9. Thereafter, defendant stated that he had signed, read, and understood the plea agreement, and that he had no questions about it. *Id.* at 19-20. He further stated that he understood the consequences of his plea, including that all of his property owned by reason of any drug transaction could be forfeited. *Id.* at 21. Defendant conceded that he was pleading guilty because of the trial testimony received thus far. *Id.* at 22.

Nothing in the record indicates defendant's plea would have been different if he had been questioned further about forfeitability of his assets. He intended to forfeit all of his property without requiring the government to prove the assets were forfeitable. The plea agreement requires forfeiture pursuant to § 853, which includes forfeitable assets under § 853(a) and substitute

assets under § 853(p). *See also* 21 U.S.C. § 853(o) (§ 853 is to be liberally construed).

Further, defendant received a favorable plea agreement. In exchange for forfeiting all of his property, the government recommended the minimum sentence of twenty years imprisonment and agreed to drop all other counts in the indictment. One of those counts charged him with use of firearms with silencers in drug trafficking which mandates, upon conviction, a thirty-year sentence consecutive to the sentence on the underlying drug offense. Defendant entered into the plea agreement after the government presented overwhelming evidence of his guilt. He now seeks the benefit of that bargain, but only to the extent it favors him. We will not require the government to undergo a fact-finding hearing and forego a substantial benefit of its bargain.

We hold that defendant is bound by the terms of the plea agreement, *see Alexander*, 869 F.2d at 94, in which he unambiguously forfeited all of his property. The district court's extraneous statements that defendant was only forfeiting assets listed in the CCE count of the indictment or from his drug trade do not establish that defendant did not knowingly and voluntarily forfeit all of his property. Rather, defendant agreed to forfeit all of his assets, including some that on their face had no connection with his drug dealings – *e.g.*, "all bank accounts, investments, retirement accounts," I R. tab 210 at 3. Nothing in the agreement limits the forfeiture to those assets with an established factual basis for forfeiture. Defendant is also not limited to forfeiting only those assets directly related to the CCE conviction. Accordingly, the district court properly ordered on December 23, 1992, the forfeiture of

all of defendant's assets[8] based on defendant's written agreement and knowing and voluntary ratification of that agreement at the change of plea hearing.

III

Defendant argues that he was not advised of and did not waive his right to a jury trial on forfeiture issues. Specifically, defendant contends he did not sign a written waiver of his right to a jury trial and there was no colloquy with the court during the plea or sentencing hearing regarding his right to or waiver of a trial on forfeitability of assets.

"The Sixth Amendment never has been thought to guarantee a right to a jury determination [on punishment]." *Spaziano v. Florida*, 468 U.S. 447, 459, 104 S.Ct. 3154, 3161, 82 L.Ed.2d 340 (1984) (right to jury trial does not include right to jury determination whether to impose capital sentence). This suggests that defendant does not have a *constitutional* right to a jury trial at the forfeiture stage of these proceedings; the circuits, however, would apparently split on the issue of a constitutional right to a jury trial on forfeiture. *Compare United States v. Robinson*, 8 F.3d 418, 420 (7th Cir.1993) (noting in dicta that a

[8] Of course, defendant could only agree to forfeit assets over which he had a power of disposition. Thus, if he had an interest in a profit sharing or pension plan established by his corporate employer that was inalienable by law, or if he was beneficiary of a valid spendthrift trust created by another person, these interests would be excluded from forfeiture in the same manner as assets in defendant's possession owned by a third party.

defendant does not have a constitutional right to a jury determination on forfeiture issues, but acknowledging the right to such a determination under Fed.R.Crim.P. 31(e)) *with United States v. Garrett*, 727 F.2d 1003, 1012 & n. 6 (11th Cir.1984) (holding that a defendant has a constitutional right to a jury trial in a 21 U.S.C. § 848 proceeding to determine if an asset is forfeitable, after a jury trial as to guilt), *affirmed on other grounds*, 471 U.S. 773, 105 S.Ct. 2407, 85 L.Ed.2d 764 (1985). We need not decide that issue because constitutional rights can be waived, and because a defendant does have a *statutory* right, pursuant to Fed.R.Crim.P. 31(e),[9] to have a jury determine which of his assets may be forfeited. *Robinson*, 8 F.3d at 420. Thus, we must determine whether defendant waived his right to a jury trial. "[A] defendant's waiver of his statutory right to have a jury determine which portion of his property is subject to forfeiture is only valid if knowingly and voluntarily made." *Id.* at 421. A defendant has the burden of proving that he did not exercise a valid waiver of his right. *Id.* at 422.

A valid waiver of the right to a jury trial depends on unique facts of each case. *See id.* At the plea hearing, the district court advised defendant that he could continue with the jury trial that had already started. The district court told defendant that if he pleaded guilty pursuant to the plea agreement, he would give up his right to a jury trial and would be sentenced. Defendant stated that he

[9] Rule 31(e) provides that "[i]f the indictment . . . alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture if any."

understood his rights and chose to plead guilty. *Cf. United States v. Jenkins*, 904 F.2d 549, 558-59 (10th Cir.) (at trial, defendant and his counsel have responsibility to make trial court aware of desire to testify regarding forfeiture; if no request is made, court and government can assume that evidence of guilt and forfeiture may be heard together), *cert. denied*, 498 U.S. 962, 111 S.Ct. 395, 112 L.Ed.2d 404 (1990). The district court did not specifically indicate that defendant's guilty plea negated a jury trial on any forfeiture issues. But there is no evidence at that hearing that defendant wanted a jury trial on the forfeiture issue, or thought he was going to have one. The plea agreement itself waived the right to a jury trial without specific mention of forfeiture. There is no evidence in the record that the government would have agreed to a plea agreement that settled only guilt and required a jury trial on the assets to be forfeited. We hold that specific reference to a jury trial on forfeiture issues was not necessary in light of the unambiguous plea agreement and defendant's knowing and voluntary plea. Under these circumstances we conclude defendant waived his right to a jury trial.

IV

Defendant finally argues that even if all of his assets were correctly forfeited the forfeiture order violates the Excessive Fines Clause of the Eighth Amendment. The Supreme Court has determined that forfeiture may be analyzed under the Excessive Fines Clause. *Alexander v. United States*, ___ U.S. ___, ___, 113 S.Ct. 2766, 2776, 125 L.Ed.2d 441 (1993) (criminal forfeiture under 18 U.S.C. § 1963(a)); *see also United States v. Bieri*, 21 F.3d 819, 823

n.2 (8th Cir.1994) (excessive fines analysis applies to criminal forfeiture under § 853(a)). The Court, however, has not established a test to determine when a forfeiture is excessive. *Alexander*, ___ U.S. at ___, 113 S.Ct. at 2776; *Austin v. United States*, ___ U.S. ___, ___, 113 S.Ct. 2801, 2812, 125 L.Ed.2d 488 (1993). Rather, courts must consider all factors when evaluating whether a forfeiture is unconstitutionally excessive. *Bieri*, 21 F.3d at 824 (citing *Alexander*, ___ U.S. at ___, 113 S.Ct. at 2776).

We need not decide when a forfeiture might violate the Excessive Fines Clause, because the forfeiture in this case was not excessive. *See United States v. Certain Real Property & Premises Known as 38 Whalers Cove Drive, Babylon, NY*, 954 F.2d 29, 39 (2d Cir.) (civil forfeiture), *cert. denied*, ___ U.S. ___, 113 S.Ct. 55, 121 L.Ed.2d 24 (1992). A fine of up to $2,000,000 and forfeiture are permitted for a CCE offense. 21 U.S.C. § 848(a); U.S.S.G. § 5E1.2(c)(3), (4). Defendant was fined only $5,000. The plea agreement stated that property up to $1,500,000 could be forfeited; yet the actual value of the property forfeited was only $410,000. The forfeiture order did not violate the Excessive Fines Clause of the Eighth Amendment.

V

Defendant raises several other arguments in his pro se briefs, mostly related to the issues determined above. These arguments are not sufficiently meritorious to warrant their being specifically addressed.

The order of forfeiture is AFFIRMED. The government's motion to dismiss is DENIED. Defendant's motion for limited remand is DENIED as moot.

Supreme Court of the United States

No. 94-7427

Joseph Libretti,

Petitioner

v.

United States

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 27, 1995